

Exhibit K

Page 1		Page 3	
1	UNITED STATES DISTRICT COURT FOR THE	1	EXHIBITS CONT.
2	WESTERN DISTRICT OF MISSOURI	2	NO. DESCRIPTION PAGE
3	CENTRAL DIVISION	3	Exhibit 11 Application for Services and
4	SHONDEL CHURCH, et al.,)	4	Promise to Pay 201
5	Plaintiffs,)	5	Exhibit 12 Instructions for Determining
6) Case No.	6	Indigence 203
7	vs.) 17-04057-CV-C-NKL	7	(Original exhibits attached to original transcript.)
8)	8	
9	STATE OF MISSOURI, et al.,)	9	
10	Defendants.)	10	
11		11	
12	VIDEO DEPOSITION OF RUTH PETSCH	12	
13	TAKEN ON BEHALF OF THE PLAINTIFFS	13	
14	December 5, 2017	14	
15		15	
16		16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
25		25	

Page 2		Page 4	
1	I N D E X	1	UNITED STATES DISTRICT COURT FOR THE
2	WITNESS: PAGE	2	WESTERN DISTRICT OF MISSOURI
3	RUTH PETSCH	3	CENTRAL DIVISION
4	EXAMINATION BY MR. WILLIAMSON 7	4	SHONDEL CHURCH, et al.,)
5	EXAMINATION BY MR. RAMSEY 145	5	Plaintiffs,)
6	EXAMINATION BY MS. SHIPMA 198	6) Case No.
7	EXAMINATION BY MR. RAMSEY 206	7	vs.) 17-04057-CV-C-NKL
8	EXAMINATION BY MR. WILLIAMSON 208	8)
9		9	STATE OF MISSOURI, et al.,)
10	EXHIBITS	10	Defendants.)
11	NO. DESCRIPTION PAGE	11	
12	Exhibit 1 Client Contact Policy E-mail 58	12	VIDEO DEPOSITION OF RUTH PETSCH, produced,
13	Exhibit 2 Duties Under Missouri v. Frye 88	13	sworn and examined on December 5, 2017, at the
14	Exhibit 3 10/2/2017 Letter 123	14	offices of the American Civil Liberties Union of
15	Exhibit 4 Rules of Professional Responsibility E-mail 124	15	Missouri Foundation, 406 West 34th Street, Suite 420,
16		16	Kansas City, Missouri 64111, before Emily S. Hughes, a
17	Exhibit 5 Suggestions in Support of Writ of Prohibition and/or Mandamus 124	17	Certified Court Reporter and Notary Public within and
18	Exhibit 6 MCRC - Notification of Case Assignment 129	18	for the State of Missouri, in a certain cause now
19		19	pending in the United States District Court, Western
20	Exhibit 7 Petition for Writ of Prohibition and Suggestions 136	20	District of Missouri, between SHONDEL CHURCH, et al.,
21	Exhibit 8 Motion Requesting Conference to Discuss Caseload Issues 137	21	Plaintiffs, vs. STATE OF MISSOURI, et al., Defendants;
22		22	on behalf of the Plaintiffs.
23	Exhibit 9 Complaint Form 139	23	
24	Exhibit 10 Guidelines for Determination of Indigence 199	24	
25		25	

<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 APPEARING FOR THE PLAINTIFFS:</p> <p>4 Mr. Jason D. Williamson</p> <p>5 ACLU FOUNDATION</p> <p>6 125 Broad Street</p> <p>7 18th Floor</p> <p>8 New York, New York 10004</p> <p>9 212.607.3300</p> <p>10 jwilliamson@aclu.org</p> <p>11</p> <p>12 APPEARING FOR THE STATE OF MISSOURI</p> <p>13 AND GOVERNOR GREITENS:</p> <p>14 Mr. Steven Alan Ramsey</p> <p>15 STATE OF MISSOURI ATTORNEY GENERAL'S OFFICE</p> <p>16 207 West High Street</p> <p>17 Jefferson City, Missouri 65102</p> <p>18 573.751.3321</p> <p>19 Steven.Ramsey@ago.mo.gov</p> <p>20</p> <p>21 APPEARING FOR THE MSPD DEFENDANTS:</p> <p>22 Ms. Jacqueline Shipma</p> <p>23 MISSOURI STATE PUBLIC DEFENDER'S OFFICE</p> <p>24 1000 West Nifong</p> <p>25 Building 7, Suite 100</p> <p>Columbia, Missouri 65203</p> <p>573.526.5212</p> <p>jacqueline.shipma@mspd.mo.gov</p> <p>Videographer:</p> <p>Ryan Gray</p> <p>Court Reporter:</p> <p>Emily S. Hughes, RPR, CRR, MO CCR #1353</p> <p>Alaris Litigation Services</p> <p>1608 Locust Street</p> <p>Kansas City, Missouri 64108</p> <p>816.221.1160</p> <p>1.800.280.3376</p>	<p style="text-align: right;">Page 7</p> <p>1 MS. SHIPMA: Jacqueline Shipma for the MSPD</p> <p>2 defendants.</p> <p>3 MR. RAMSEY: Steven Ramsey for the State of</p> <p>4 Missouri and Governor Greitens.</p> <p>5 VIDEOGRAPHER: Would the court reporter</p> <p>6 please swear in the witness?</p> <p>7 RUTH PETSCH,</p> <p>8 of lawful age, produced, sworn and examined on behalf</p> <p>9 of the Plaintiffs, deposes and says:</p> <p>10 EXAMINATION</p> <p>11 BY MR. WILLIAMSON:</p> <p>12 Q. Good morning, Ms. Petsch.</p> <p>13 A. Good morning.</p> <p>14 Q. How are you?</p> <p>15 A. Good.</p> <p>16 Q. My name is Jason Williamson. I represent</p> <p>17 the plaintiffs in this case. Have -- have you ever</p> <p>18 been deposed before?</p> <p>19 A. I don't think I have.</p> <p>20 Q. Okay. Well, it's pretty straightforward,</p> <p>21 but I'm going to ask you a few questions relevant to</p> <p>22 this case. You're required to answer those questions</p> <p>23 truthfully and to the best of your ability. Remember</p> <p>24 that your testimony here is under oath, so it's just</p> <p>25 as if you were testifying in court. Do you understand</p>
<p style="text-align: right;">Page 6</p> <p>1 IT IS HEREBY STIPULATED AND AGREED by and between</p> <p>2 counsel for the Plaintiffs and counsel for the</p> <p>3 Defendants that this deposition may be taken in</p> <p>4 shorthand by Emily S. Hughes, RPR, CRR, MO CCR #1353,</p> <p>5 and Missouri Notary Public, and afterwards transcribed</p> <p>6 into typewriting; and the signature of the witness is</p> <p>7 expressly reserved.</p> <p>8 * * * * *</p> <p>9 (Deposition commenced at 9:05 a.m.)</p> <p>10 VIDEOGRAPHER: We are on the record.</p> <p>11 Today's date is December 5, 2017, and the time is</p> <p>12 9:05 a.m. This is the video recorded deposition of</p> <p>13 Ruth Petsch in the matter of Shondel Church, et al.,</p> <p>14 versus State of Missouri, et al., Case Number</p> <p>15 17-04057-CV-C-NKL in the United States District Court</p> <p>16 for the Western District of Missouri, Central</p> <p>17 Division. This deposition is being held at the</p> <p>18 American Civil Liberties Union of Missouri Foundation.</p> <p>19 The reporter's name is Emily Hughes. My</p> <p>20 name is Ryan Gray. I'm the legal videographer. We</p> <p>21 are with Alaris Litigation Services.</p> <p>22 Would the attorneys present please</p> <p>23 introduce themselves?</p> <p>24 MR. WILLIAMSON: Jason Williamson, ACLU,</p> <p>25 for the plaintiffs.</p>	<p style="text-align: right;">Page 8</p> <p>1 that?</p> <p>2 A. Yes.</p> <p>3 Q. Your attorney may object to one or more of</p> <p>4 my questions, but except in limited circumstances,</p> <p>5 you're still required to answer the question; okay?</p> <p>6 A. (Nonverbal response.)</p> <p>7 Q. If you do not hear or understand my</p> <p>8 question, just let me know, and I can ask a -- a</p> <p>9 better question or rephrase the question; okay?</p> <p>10 A. Okay.</p> <p>11 Q. And a few things that I think will help our</p> <p>12 court reporter here today: First of all, when you are</p> <p>13 answering questions, just be sure to -- to speak</p> <p>14 clearly and loudly enough for her to hear you. Also</p> <p>15 make sure you answer each question verbally as opposed</p> <p>16 to using body movements so that she can record that</p> <p>17 for the record. And also, I'd like to ask to let one</p> <p>18 another finish before -- so allow me to finish my</p> <p>19 question before you answer. I'll do my very best to</p> <p>20 let you finish your answer before I ask you another</p> <p>21 question; okay?</p> <p>22 A. Okay.</p> <p>23 Q. Did you prepare for the deposition today?</p> <p>24 A. Yes.</p> <p>25 Q. How did you prepare?</p>

2 (Pages 5 to 8)

<p style="text-align: right;">Page 9</p> <p>1 A. Yesterday, I met with Jackie for, you know, 2 45 minutes, something like that. I read back over 3 some affidavits that my attorneys had written about 4 their case overload, and I looked -- I looked at the 5 time frame, because in speaking with Jackie, I 6 wasn't -- I wasn't sure -- a -- a lot of things have 7 happened recently, and I -- and I wanted to be more 8 clear on the time frame, because it -- if you -- it 9 feels like they happened all at once, so --</p> <p>10 Q. And did you -- did you bring any or all of 11 those documents with you today?</p> <p>12 A. No.</p> <p>13 Q. Okay. Ms. Petsch, by whom are you 14 employed?</p> <p>15 A. Missouri State Public Defender.</p> <p>16 Q. And what is your current title?</p> <p>17 A. I'm the district defender for the 18 Kansas City trial office.</p> <p>19 Q. And how long have you served as district 20 defender?</p> <p>21 A. I became district defender in, I believe 22 March of '11.</p> <p>23 Q. Have you served with the MSPD in any other 24 capacity?</p> <p>25 A. Yes. I was assistant public defender. I</p>	<p style="text-align: right;">Page 11</p> <p>1 law school, but I graduated law school in 1997, took 2 the bar, and my first legal job was with MSPD.</p> <p>3 Q. What did you do prior to law school?</p> <p>4 A. Well, I was an undergrad. I mean, I -- I 5 did a lot of catering.</p> <p>6 Q. So you went straight from undergrad to law 7 school?</p> <p>8 A. Yes.</p> <p>9 Q. Now, you mentioned that Area 16 encompasses 10 Kansas City. Are there any other counties that are 11 part of Area 16?</p> <p>12 A. Well, we -- Area 16 is strange in that 13 there's two courthouses. There's one in Kansas City; 14 there's one in Independence. So we go to both 15 courthouses. And then I do have some lawyers that are 16 doing some conflicts. That's dying out because we got 17 conflict funds this year, so in some of the 18 surrounding counties like Platte, Clay, Cass, I feel 19 like Clinton. But again, most of that is -- since 20 July 1, most of that, we're cutting back on because 21 those cases are being contracted, but I do have some 22 lawyers who do conflict cases in some of the 23 surrounding counties.</p> <p>24 Q. Is it your understanding that your office, 25 going forward, will no longer be required or expected</p>
<p style="text-align: right;">Page 10</p> <p>1 started in January of 1998, and then I held the -- I 2 held -- well, there's different levels of assistant 3 public defender, but I was assistant public defender 4 in one level or another until I became district 5 defender.</p> <p>6 Q. Okay. And the Kansas City trial office is 7 part of District 16?</p> <p>8 A. Yes. We -- we're all of District 16 for 9 the most part.</p> <p>10 Q. And I want to get this right. Do you refer 11 to it as Area 16 or District 16, or are those 12 interchangeable?</p> <p>13 A. MSPD calls it Area 16. It is the 16th 14 Judicial Circuit in -- in Kansas City, the circuit 15 matches up with the office. We only cover one county, 16 which is the 16th Judicial Circuit. So they get 17 called a lot of things, but I think internally, we 18 call it Area 16.</p> <p>19 Q. So we'll come back to your experience 20 within the Kansas City office, but can you describe 21 your professional experience prior to coming to the 22 Missouri State Public Defender?</p> <p>23 A. As far as professional legal experience, I 24 didn't have any. I -- I interned in the Saint Louis 25 City office, and I did some internships while through</p>	<p style="text-align: right;">Page 12</p> <p>1 to -- to cover conflicts in these other counties?</p> <p>2 A. Well, that's my hope. I've been with the 3 system long enough to know that that -- that doesn't 4 always happen. Since July 1, we have gotten a few 5 cases from -- conflict cases mostly because we've had 6 an attorney who already represented that client, and 7 they had another case pop up, and they were sent to 8 us. But yes, my -- my hope would be that my -- my 9 office, every MSPD office is out of the conflict 10 business, and we can focus on the 16th Judicial 11 Circuit.</p> <p>12 Q. How much time were your lawyers spending on 13 conflict cases prior to July 1?</p> <p>14 A. Well, I had one lawyer, that was his -- his 15 entire job was to do conflicts, and I had a second 16 lawyer who -- who probably 50 to 75 percent of her 17 caseload was conflicts, so if you --</p> <p>18 Q. Okay.</p> <p>19 A. -- you know, can put that into attorney 20 hours, but I basically had almost two lawyers devoted 21 to doing conflict work.</p> <p>22 Q. And were other lawyers doing cases here and 23 there, conflict cases here and there, or were -- or 24 were all the conflict cases being handled by those two 25 attorneys?</p>

3 (Pages 9 to 12)

<p style="text-align: right;">Page 13</p> <p>1 A. With the exception of I rotated -- the</p> <p>2 conflicts -- the person I have had on conflicts, he --</p> <p>3 he's been with us 29 years, so he's been in conflicts,</p> <p>4 I want to say -- he was doing it when I took over</p> <p>5 management position, so he's been on conflicts the</p> <p>6 entire time. I've rotated people in and out, so I</p> <p>7 might have had one or two other people who had sort of</p> <p>8 residual cases, but for just -- just ease of use, it</p> <p>9 was easier to have a consistent person going to the</p> <p>10 various counties.</p> <p>11 Q. Okay. How many attorneys do you currently</p> <p>12 have on staff in your office?</p> <p>13 A. Including myself, 35.</p> <p>14 Q. And how many of those 35 handle felony</p> <p>15 cases?</p> <p>16 A. All of them.</p> <p>17 Q. How many handle misdemeanors?</p> <p>18 A. All of them.</p> <p>19 Q. How many handle juvenile cases?</p> <p>20 A. I think -- one of my conflict lawyers does</p> <p>21 not, so I would say -- and I would say myself and my</p> <p>22 deputy do not handle juvenile cases. I mean, we've</p> <p>23 handled them, but right now, I would say we -- we</p> <p>24 don't handle juvenile cases, so 32.</p> <p>25 Q. How many of your lawyers handle probation</p>	<p style="text-align: right;">Page 15</p> <p>1 attorney in your office been practicing?</p> <p>2 A. Since September 18.</p> <p>3 Q. And even that attorney is carrying felony</p> <p>4 cases on his or her caseload?</p> <p>5 A. Yes.</p> <p>6 Q. Do you make distinctions between A, B</p> <p>7 felonies and C, D felonies when you're assigning the</p> <p>8 cases to your lawyers?</p> <p>9 A. Yes.</p> <p>10 Q. All right. How many investigators do you</p> <p>11 have on staff right now?</p> <p>12 A. Well, currently staffed, I have three. I</p> <p>13 have -- I'm in the process of hiring a fourth. Full</p> <p>14 staff, we're at four.</p> <p>15 Q. Do you have any social workers on staff?</p> <p>16 A. No.</p> <p>17 Q. How many paralegals do you have?</p> <p>18 A. I don't have any paralegals.</p> <p>19 Q. Do you have any legal assistants?</p> <p>20 A. I do. I have five.</p> <p>21 Q. And what -- what role do they play?</p> <p>22 A. The legal assistants, they screen all of</p> <p>23 the clients who are in custody and a number of out of</p> <p>24 custody. So they go to the jail. We have an</p> <p>25 application, you have to qualify for the public</p>
<p style="text-align: right;">Page 14</p> <p>1 revocation cases?</p> <p>2 A. Every one.</p> <p>3 Q. And how many of them do direct appeals?</p> <p>4 A. I have one -- I have one lawyer -- excuse</p> <p>5 me -- doing work at -- he kind of has a lot of the</p> <p>6 Bazell cases, which is this -- a case that came down</p> <p>7 that they did a lot of felony stealings, misdemeanors,</p> <p>8 so -- and it created a lot of chaos for a while, so he</p> <p>9 has a -- has a bunch of those, so I have maybe one</p> <p>10 who's doing that. Direct appeals are generally</p> <p>11 handled by our appellate office.</p> <p>12 Q. Are there any other types of cases that are</p> <p>13 handled by your office that I haven't named?</p> <p>14 A. Again, there's -- there's different levels</p> <p>15 of post-conviction for that Bazell lawyer, which I --</p> <p>16 I couldn't even tell you what they are, but I -- I</p> <p>17 think that about covers it, yes.</p> <p>18 Q. Now, you have -- let me rephrase.</p> <p>19 How long has the most experienced lawyer in</p> <p>20 your office been practicing, as far as you know?</p> <p>21 A. 29 years.</p> <p>22 Q. Okay. And that's the conflicts --</p> <p>23 A. Yes.</p> <p>24 Q. -- attorney?</p> <p>25 And how long has the least experienced</p>	<p style="text-align: right;">Page 16</p> <p>1 defender's office, they fill out those. And then they</p> <p>2 open every file, so that's, you know, a -- right</p> <p>3 around -- give or take right around 6,000, 5,000 --</p> <p>4 6,000 cases a year, and more applications, because</p> <p>5 some of those folks are denied or some of those folks</p> <p>6 hire counsel in the meantime. We'll screen them in</p> <p>7 jail, and then their family will hire someone. And</p> <p>8 then there are also -- I have a team structure. I</p> <p>9 have four teams in the office. They're assigned to a</p> <p>10 trial team, so they do get requests from attorneys to</p> <p>11 do things like edit video, show -- there's a</p> <p>12 tremendous amount of video. Most of our -- all of our</p> <p>13 discovery comes on disk, and there's a lot of witness</p> <p>14 interviews. Most cases -- a lot of cases have hours</p> <p>15 and hours of video between witness interviews and dash</p> <p>16 cam and the like, so they do a lot of showing videos</p> <p>17 to clients in the jail.</p> <p>18 Q. Along with the attorney, or just the --</p> <p>19 A. Usually, just the legal assistant.</p> <p>20 Attorneys sometimes do that as well, but they -- they</p> <p>21 don't do it together.</p> <p>22 Q. And is that because you just don't have the</p> <p>23 capacity for them --</p> <p>24 A. Right.</p> <p>25 Q. -- to do it together?</p>

4 (Pages 13 to 16)

<p style="text-align: right;">Page 17</p> <p>1 A. So yeah. We'd see that as a waste of 2 resources.</p> <p>3 Q. Understood.</p> <p>4 How many attorneys are on each trial team?</p> <p>5 A. Around eight. Everyone is on a team except 6 for myself and my deputy, Joseph Megerman, so 7 everyone else -- and I have team leaders for the 8 teams, but everyone is on a team.</p> <p>9 Q. And you said the legal assistants are 10 assigned to a trial team; correct?</p> <p>11 A. Yes.</p> <p>12 Q. So does that mean that individual lawyers 13 are not -- individual lawyers don't request assistance 14 from the legal assistant, or is that -- or -- or do 15 they?</p> <p>16 A. They do.</p> <p>17 Q. Okay.</p> <p>18 A. They have -- the teams meet, and each of 19 the individual teams sort of allocates the best use of 20 the resources they have. So some teams have attorneys 21 doing requests of legal assistants as part of their 22 team structure, and some of them have set duties for 23 the team, and it does vary -- the time kind of on 24 votes on it and decides what's the best use of 25 resources, so --</p>	<p style="text-align: right;">Page 19</p> <p>1 as well, so some of them write letters for lawyers or 2 mail letters, but yes, all strictly clerical.</p> <p>3 Q. Do you have a sense of what the turnover 4 rate is among attorneys in your office?</p> <p>5 A. Well, last year, I hired -- I had nine 6 people start out of the 35, so I don't -- I haven't 7 done that math.</p> <p>8 Q. Does that mean, were those nine people who 9 replaced nine other people who resigned?</p> <p>10 A. Left, yes.</p> <p>11 Q. And do you have any opinion as to what the 12 cause of those departures may have been?</p> <p>13 A. Well, I -- I can tell -- I do an exit 14 meeting when people depart so I can talk about what -- 15 a lot of people leave for private practice. A lot 16 of -- a lot of people leave to make more money, and 17 then a number of people leave because of the work, the 18 grind.</p> <p>19 Q. Is the -- is the turnover rate concerning 20 at all to you?</p> <p>21 A. Absolutely. It's -- I do all the hiring, 22 and between attorneys and support staff, I -- I 23 literally don't remember the last time I wasn't 24 engaged in hiring, whether I'm reading resumes or I'm 25 interviewing, or right now, I'm checking references.</p>
<p style="text-align: right;">Page 18</p> <p>1 Q. And each team has the discretion to do 2 that?</p> <p>3 A. Yes.</p> <p>4 Q. You're not involved in that process?</p> <p>5 A. Well, if -- if it's something that goes 6 outside the legal assistant job duty entirely, I'd 7 probably have a discussion with them about it, so I -- 8 I will ask the team leaders, what are you having -- 9 what are you having your support staff do, what are 10 you -- you know, how -- how are you best utilizing 11 your team members? And so I have a feel for what each 12 team is doing at a given time or what their game plan 13 is. Sometimes they plan things, and it doesn't come 14 to fruition, but that's -- but that's how they divide 15 it.</p> <p>16 Q. Okay. So aside from the 35 attorneys, four 17 investigators, five legal assistants, are there any 18 other staff in your office?</p> <p>19 A. Yes. I have -- there's one administrative 20 assistant who acts more like an office manager, and I 21 have four office support assistants.</p> <p>22 Q. And the office support assistants do 23 strictly administrative work, clerical work?</p> <p>24 A. Yes. They -- they man our phones, they 25 close every file, and they're also assigned to teams</p>	<p style="text-align: right;">Page 20</p> <p>1 I -- it -- I am constantly doing that. It's a 2 tremendous drain on my time as well as, I have to have 3 a lawyer what is a trainer, so we're sort of 4 constantly training people. And obviously, trial work 5 isn't a -- you don't walk into it easily and 6 naturally. It requires a lot of training and it 7 requires a lot of time and development, so there's -- 8 it's a constant question/answer, constant -- I believe 9 in open door, so I have a constant stream of people at 10 my door. Most of my core work that I do, I do at 11 home.</p> <p>12 Q. We'll come back to that --</p> <p>13 A. Sure.</p> <p>14 Q. -- shortly.</p> <p>15 Is the -- when someone leaves your office, 16 do you -- are you generally -- strike that.</p> <p>17 When someone leaves your office, how long 18 does it generally take you to fill that position?</p> <p>19 A. At least six weeks. It has to post for two 20 weeks. I generally do two rounds of interviews, so 21 you know, you have to give people notice to get there. 22 And I do it as efficiently as possible. One, I fear 23 losing -- I've lost positions before, so I'm always 24 afraid of losing a spot. And two, that workload goes 25 somewhere, so it's really -- I think it's really</p>

5 (Pages 17 to 20)

<p style="text-align: right;">Page 21</p> <p>1 demoralizing for the staff to have people out. When 2 someone leaves, their cases get disbursed, and you 3 know, they -- they feel the pain instantly.</p> <p>4 Q. And how do you handle the caseload for that 5 six weeks or however along the intervening period is 6 to make sure that those cases, the -- the lawyer's 7 cases are covered?</p> <p>8 A. Well, we reassign the cases immediately, so 9 that means lawyers who thought they had set schedules 10 will now get trial cases dropped in their lap and 11 trial settings dropped in their lap that they weren't 12 anticipating. It's -- there's a lot of things that 13 bug the lawyers, but that really bugs the lawyers.</p> <p>14 Q. How do you choose who gets the pleasure of 15 having cases dropped in their lap?</p> <p>16 A. So one of the -- and I -- Joseph Megerman 17 does most of the assigning, but I've been the assigner 18 in the office before. Sometimes you look at -- we 19 have the ability to look at people's trial schedules, 20 see and look when people have availability. You 21 will -- obviously, the type of case is important. I'm 22 not going to give new lawyers murder 1. And some of 23 it is, it just has to go somewhere.</p> <p>24 Q. Is it fair to say that that is one of the 25 implications of -- of a high turnover rate, that you</p>	<p style="text-align: right;">Page 23</p> <p>1 trial experience, so -- but for the most part, most of 2 my new hires are brand new.</p> <p>3 Q. Right out of law school?</p> <p>4 A. Yes. Or this is their first legal job. 5 I've hired some people -- I hired a guy who just 6 worked in a start-up for a two years just doing IT 7 stuff, but he wasn't -- it didn't help his legal 8 acumen any.</p> <p>9 Q. And when those new lawyers come on board, 10 is there a period of time that they have to spend in 11 training before they are assigned clients?</p> <p>12 A. No.</p> <p>13 Q. Do they -- do they receive any training as 14 new attorneys in the office?</p> <p>15 A. Yes. Well, I have a training person, 16 and -- and she had a baby this summer, so it made for 17 hectic times for the people who started this summer. 18 But -- and then we -- I actually moved her position. 19 She wanted to move positions when she came back. So I 20 have a new training person. He goes to the jail with 21 them, he goes to court dates with them until he's 22 confident that they're able to handle certain types of 23 things. That being said, three people start in 24 September. One person started in August. It would be 25 physically impossible for him to attend every dep --</p>
<p style="text-align: right;">Page 22</p> <p>1 have lawyers taking on -- lawyers who are already very 2 busy taking on additional cases, at least in the 3 interim?</p> <p>4 A. Yes.</p> <p>5 Q. You mentioned that you are always afraid of 6 losing a spot?</p> <p>7 A. Right.</p> <p>8 Q. Can you explain what you mean?</p> <p>9 A. Well, we -- so the system, you know, we're 10 a statewide system, so there are attorney positions. 11 You know, they look at offices that are overload and 12 positions -- I've -- I -- I think I've lost two, and 13 then gained one. But positions will go to other 14 offices who are considered more overloaded, so you'll 15 lose someone, and then you don't get to fill it. I've 16 lost attorney positions that way, and I've lost 17 support staff positions that way.</p> <p>18 Q. Are the majority of the new hires 19 relatively inexperienced lawyers?</p> <p>20 A. Yes. I do -- I've -- I've definitely hired 21 transfers. I'm trying to think in the past year if 22 I've hired any transfers. Maybe -- I think maybe two 23 of the nine were transfers; although, one came with no 24 trial experience, so it wasn't -- you know, I mean, it 25 wasn't like going -- the other did come with some</p>	<p style="text-align: right;">Page 24</p> <p>1 every first for all of -- all of that group, so I do 2 have training, and we do work with it, but again, it 3 fluctuates based on training. It's not -- I can't add 4 other trainers. I don't have the resources for that.</p> <p>5 Q. So to be clear, the training person is not 6 conducting day-long trainings, for example, for a 7 group of lawyers; this person is shadowing lawyers 8 in -- in their work on a daily basis?</p> <p>9 A. Right. Well, he's meeting with them, 10 discussing their cases, he'll go to the jail with them 11 for their first client, you know, sitting in on client 12 interviews, sort of working with them. All of our 13 training is on the job for the most part as far as 14 that goes. I do -- once a month, I do have a -- we 15 call it our second Friday CLE. It's not a real CLE, 16 but it's sort of things that we see that lawyers have 17 issues with, and then it's generally in-house people 18 talking about voir dire, talking about other topics, 19 making a record things like that, to get -- but it's 20 usually over lunch, and it's usually an hour to an 21 hour and a half long.</p> <p>22 Q. Is that mandatory for people to attend?</p> <p>23 A. It's mandatory -- I make it mandatory for 24 ones and twos, but I mean, if someone is on vacation, 25 I'm not going to hold them. So -- and ones and twos,</p>

6 (Pages 21 to 24)

<p style="text-align: right;">Page 25</p> <p>1 APD 1s and 2s, because I just want them to have that 2 experience, and I'm -- it's open to the whole office, 3 and depending on the topic and the speaker, we have a 4 fair number of people. I will also say the state has 5 statewide training, but that isn't -- I'm not in 6 charge of that.</p> <p>7 Q. Are your lawyers required to attend the 8 statewide training?</p> <p>9 A. The new lawyers are, yes. And most lawyers 10 want to in some capacity because it gets them their 11 CLE hours, so --</p> <p>12 Q. You referenced APDs -- APD 1 and 2s?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Can you just explain what you mean?</p> <p>15 A. So a new hire is an APD 1, and you're an 16 APD 1 -- you're eligible to be promoted after a year 17 of practice and successful performance, and then you 18 become an APD 2.</p> <p>19 I write -- I personally write every review 20 in the office, so the attorneys are reviewed, and then 21 they become APD 2s. And you're an APD 2 -- you're not 22 eligible to move up for two years in successful 23 practice including trial practice. We have -- we have 24 a form for it, and I -- I review every -- all reviews 25 are written by me in my office, so most attorneys,</p>	<p style="text-align: right;">Page 27</p> <p>1 successful performance in A and B felony. So for me, 2 my four standard is you should be able to take any 3 type of case. If you got to each of the marks and got 4 promoted in the timeliest manner possible, the soonest 5 you could reach that is five years, and that is our -- 6 that's our top level of trial attorney. Obviously, we 7 have management positions, but that is where attorneys 8 top out.</p> <p>9 Q. And in order to be a trial team leader, do 10 you have to be an APD 4?</p> <p>11 A. No. I -- the trial team leader is sort of 12 my own organizational tool. It's not MSPD. Because 13 it's basically impossible for myself and my deputy to 14 effectively supervise and mentor 33 people. So I do 15 interviews, I have a form, I meet with attorneys. So 16 I've made -- I've definitely made threes team leaders 17 before.</p> <p>18 Q. Okay.</p> <p>19 A. Obviously, I'd prefer a four, but when you 20 have turnover, sometimes you don't have that many 21 fours or you don't have that many interested fours.</p> <p>22 Q. And does -- since it's not tied to any MSPD 23 requirements, is it -- is there any -- is there a 24 salary implication for becoming a team leader?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 26</p> <p>1 unless they've not had trial experience or they've had 2 issues that we're working on, move up to ADP 3 at 3 about the three-year mark.</p> <p>4 Q. Does every attorney start as an APD 1, or 5 does it depend on your level --</p> <p>6 A. Every attorney starts as an APD 1. Oh, 7 well, no. I guess that's not true. There -- if we 8 have experienced people, they can be waived in.</p> <p>9 Q. Okay.</p> <p>10 A. So I've -- certainly, the transfers -- with 11 transfers, it's easy. They -- they're already at a 12 level, and they transfer at the same level. But I 13 have hired people with experience who were -- their 14 experience was given weight, so they came in as twos. 15 I just had -- I just had a lawyer who had some 16 experience, so they -- they had me promote him six 17 months early. Normally, you'd be eligible at a year, 18 and I promoted him at six months, so there are some 19 concessions made when people have experience.</p> <p>20 Q. And can -- can you just sort of name what 21 the other levels of promotion are after AP -- APD 3?</p> <p>22 A. Well, there's APD 4.</p> <p>23 Q. Okay.</p> <p>24 A. So -- and that, again, is another two 25 years -- you have to have at least two years of highly</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. And just -- I just want to clarify one 2 thing. You mentioned that the -- your -- your trainer 3 shadows the -- the lawyers. So does that mean that 4 that person is really only training one lawyer a day 5 or a couple of lawyers a day?</p> <p>6 A. I think it varies. And it depends -- 7 you -- it depends how their -- their court is 8 scheduled, so he -- I think he'll meet with them sort 9 of informally as a group to talk about -- let's talk 10 about offers today. But I would say -- the truth is 11 I -- I don't know. I think there are days when he 12 probably touches base with everybody on the training 13 team, and there are probably days when he doesn't 14 touch base with any of them. It just varies depending 15 on what they have going on and what their needs are.</p> <p>16 Q. So you mentioned that, at least at the 17 moment, you're doing a lot of hiring?</p> <p>18 A. Yes.</p> <p>19 Q. Can you just talk a little bit about 20 your -- your other day-to-day responsibilities as 21 district defender?</p> <p>22 A. Along with hiring, I would say I'm 23 constantly promoting with -- with the turnover, I'm 24 constantly, I think I've promoted 15 people this year. 25 The upper level promotions take me 20 to 40 hours to</p>

7 (Pages 25 to 28)

<p style="text-align: right;">Page 29</p> <p>1 write, I think. And an APD 1 is a little shorter, 2 because there's not as much to look into. What else 3 do I do? I -- I'm in charge of approving all 4 encumbrance requests, all requests for depositions. I 5 approve all leave, so that's probably five or six 6 requests a day for leave. I have been carrying two 7 probation violation dockets. I do -- I do the HR for 8 the office, so if -- obviously, we have an HR, but, 9 you know, I have to do whatever claims come in, 10 whatever investigation. I deal directly with the 11 courts, so if there are complaints that way, I'm on -- 12 I have to -- there's meetings set up with the 13 presiding judge, things like that. I do those things. 14 Q. You mentioned that you also write every 15 review -- 16 A. Yes. 17 Q. -- for your attorneys? 18 A. That's part of the promotions, yes. 19 Q. Oh, part of the promotions process? 20 A. Uh-huh. 21 Q. What is the basis for that review? In 22 other words, are you getting reports from supervising 23 attorneys about the other attorneys, or are you doing 24 the initial supervision? 25 A. So there's a variety of things. I do talk</p>	<p style="text-align: right;">Page 31</p> <p>1 it's sitting down with them and asking them about 2 specific trial skills and where people are at. 3 Q. You mentioned that you do carry your own 4 caseload; correct? 5 A. Well, I carry a case -- I'm doing only 6 probation violations at the time, so yes. I'm not 7 carrying a trial caseload. 8 Q. And -- and why only probation cases? 9 A. Well, probation violations are set at more 10 predictable times, and while they can require -- I 11 mean, I've taken depositions. I've done real work on 12 probation violations. They don't -- it's a more 13 predictable amount of time that you can devote to it 14 than trial cases, which are all over the place, and 15 then you have -- it really, for me, I'm a resource for 16 the office, and then trying to split up what is more 17 valuable, being a resource for the office or my -- my 18 legal obligations to a client when you undertake 19 representation that way is -- especially when you have 20 a trial case, I just -- I tried to keep some cases 21 when I became district defender, and eventually had to 22 assign them out because I wasn't seeing the clients 23 and I wasn't getting any work done on it, so I found 24 that split very difficult. But with probation 25 violations, I can -- plus, they're -- you know, we</p>
<p style="text-align: right;">Page 30</p> <p>1 to the team leaders about how people are doing, and I 2 do try -- occasionally, I get to second chair somebody 3 in trial. It's not very often, and -- but I do try if 4 someone's in trial to get over there to catch part of 5 their trial so that I can see their trial performance 6 for myself. But I -- I request cases. I go through 7 their cases. I go through their entire caseload. I 8 check all of their client contact, whether they're 9 seeing their clients -- we have a requirement with 10 MSPD that you're supposed to see your client within 11 seven days of receiving a case, as well as monthly 12 contact after that. So for a number of files, I look 13 at every contact. For all of their open cases, I look 14 at first and last contacts. When I look through their 15 files, I look for what kind of motions they're doing, 16 general -- kind of what you'd expect a defense 17 attorney, what -- how you evaluate a defense attorney, 18 what their writing is, and that, for the most part, is 19 kind of the bulk of -- looking through files. And 20 then I do talk to team leaders and anyone who has 21 second chaired. I ask team leaders who second chair 22 trials, because they are -- they are -- I hope that 23 they do a bulk of the second chairing to fill out an 24 evaluation. Some of them are better at that than 25 others in doing that in a timely manner, so sometimes</p>	<p style="text-align: right;">Page 32</p> <p>1 have a lot of divisions, and it means -- I mean, when 2 I have turnover, I don't have enough lawyers to take a 3 division. The -- usually, lawyers have trial 4 assignments, and then they're assigned to a division, 5 and they get all the probation violations that come to 6 that division. But when I run out of lawyers, I'm 7 looking at either doubling up on some lawyers who 8 already have too many cases, or just taking them 9 myself. 10 Q. How long has it been since you've had a 11 trial docket? 12 A. I think I -- probably about six months into 13 when I took over, so 2011. 14 Q. And -- and when you refer to a trial 15 docket, does that include any and all felonies? 16 A. Yes. 17 Q. And all misdemeanors? 18 A. Yes. 19 Q. Which is to say those cases could go to 20 trial? In other words, you're characterizing -- 21 characterizing them as a trial docket because those 22 are cases that could conceivably go to trial? 23 A. Yes, correct. And I -- I should -- 24 recently, a number of the Jackson County judges have 25 ordered me to enter on a number of cases, which I have</p>

8 (Pages 29 to 32)

<p style="text-align: right;">Page 33</p> <p>1 done so, so I guess you could say I'm entered on some</p> <p>2 cases that could go to trial at this point, but I'm</p> <p>3 also having -- other attorneys are also entering,</p> <p>4 so --</p> <p>5 Q. And we will return to that --</p> <p>6 A. Sure.</p> <p>7 Q. -- in a bit.</p> <p>8 Does the MSPD central office play any role</p> <p>9 at all in -- in performance evaluations of your</p> <p>10 lawyers -- of the lawyers in your office?</p> <p>11 A. Yes. Well, I write them, and for APD, the</p> <p>12 one to two is based on my evaluation solely. That</p> <p>13 doesn't get run by anyone. But all the other</p> <p>14 evaluations do. So I write an evaluation, and then I</p> <p>15 send it -- right now, Ellen supervises me, and I think</p> <p>16 Joel Elmer also, he looks at -- I know he looks at all</p> <p>17 the fours. We just had a supervisor leave, so some of</p> <p>18 that is up in the air, but I've always sent it to a</p> <p>19 supervisor and then gotten feedback about sometimes</p> <p>20 add something, sometimes -- you know, or this isn't</p> <p>21 very good client contact. What can you do to motivate</p> <p>22 this person? Feedback about whether I need to change</p> <p>23 the review or work with the attorney in some way. So</p> <p>24 ultimately, I don't approve the promotions to three</p> <p>25 and four. That's -- I write them, submit them, and</p>	<p style="text-align: right;">Page 35</p> <p>1 Because as I say, I don't think I have a single lawyer</p> <p>2 who is meeting their client contact ever. I've never</p> <p>3 had anyone be 100 percent for -- definitely for</p> <p>4 certain, and I would say most people have a fair -- a</p> <p>5 fair number of not seeing clients on time or not</p> <p>6 seeing them regularly. So I do -- to me, I feel like</p> <p>7 I have to take that into account. You know, if you</p> <p>8 have someone with 100 cases, that's very different</p> <p>9 than if they had 30.</p> <p>10 Q. But it's -- there's no particular formula</p> <p>11 that you can use to --</p> <p>12 A. No.</p> <p>13 Q. Okay. Do you -- do you manage the budget</p> <p>14 in your office?</p> <p>15 A. Yes.</p> <p>16 Q. So you make decisions about how much money</p> <p>17 goes where?</p> <p>18 A. Well, I approve the expenses.</p> <p>19 Q. I see.</p> <p>20 A. The ultimate budget that's handed to me</p> <p>21 comes from upper management, so I don't -- I approve</p> <p>22 expenses within that budget, but I sign off on</p> <p>23 every staples request we make, every -- and I do sign</p> <p>24 off on all the trial -- we call them encumbrance</p> <p>25 requests. Although, some of them, if there above</p>
<p style="text-align: right;">Page 34</p> <p>1 then get feedback, and that comes from upper</p> <p>2 management.</p> <p>3 Q. And when you refer to "Ellen," that's</p> <p>4 Ellen Blaugh?</p> <p>5 A. Right.</p> <p>6 Q. How long does is generally take for the</p> <p>7 central office to make those ultimate decisions?</p> <p>8 A. Of -- it's -- it's varied over the time</p> <p>9 I've had the position. Of recent, not -- not very</p> <p>10 long at all; although, I am not afraid to pester</p> <p>11 people, so I definitely will. Because I'm cognizant</p> <p>12 of when pay periods hit, so I -- I know if I can get</p> <p>13 it approved before the next pay period, that means</p> <p>14 that it will become effective sooner, so I tend to</p> <p>15 gently hound people to get them to look at it.</p> <p>16 Because I see my role as I also advocate for the</p> <p>17 lawyers in my office, and if I have good lawyers, I</p> <p>18 certainly want to get -- them to get promoted in a</p> <p>19 timely manner, and I try and advocate for them as much</p> <p>20 as possible.</p> <p>21 Q. When you are evaluating the performance of</p> <p>22 any of your lawyers, to what extent do you consider</p> <p>23 their caseload in -- in assessing the quality of their</p> <p>24 work?</p> <p>25 A. Well, it -- it's impossible not to.</p>	<p style="text-align: right;">Page 36</p> <p>1 \$500, if they're on a murder, some of them go --</p> <p>2 they're approved by the central office. I approve</p> <p>3 only my local budget numbers, so -- but I don't -- I</p> <p>4 mean, I'm given a certain amount of money. I don't --</p> <p>5 and I keep it within that.</p> <p>6 Q. And how do you make decisions about how to</p> <p>7 use that -- how to allocate that -- that pool of money</p> <p>8 that you have to depositions versus experts versus</p> <p>9 other things that your office may need?</p> <p>10 A. Well, most of the depositions and experts</p> <p>11 come from the central level. And again, my -- my</p> <p>12 budget, you know, there's a supplies section. I don't</p> <p>13 get to borrow from supplies to pay for depos. It --</p> <p>14 it's already delineated, so -- or if I -- if I have</p> <p>15 that power, I don't -- I'm unaware of it. I don't do</p> <p>16 that.</p> <p>17 Q. So when you say that the -- so even the</p> <p>18 pool of money that you're given for your office is</p> <p>19 already itemized in terms of how much you can spend on</p> <p>20 what?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And it's your understanding that</p> <p>23 that's how it works for every district?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. How much discretion do you have in</p>

9 (Pages 33 to 36)

<p style="text-align: right;">Page 37</p> <p>1 setting policy for your office?</p> <p>2 A. I feel like I have a fair amount.</p> <p>3 Although, I'm not -- Joel Elmer was my boss my entire</p> <p>4 14 years before I ended up taking his job, so there</p> <p>5 are district defenders who are more leery about</p> <p>6 talking to upper management. I am not one of them.</p> <p>7 So for the most part, when I'm thinking about policy,</p> <p>8 I want to discuss it with experienced people who --</p> <p>9 who have been through it or have ideas about it. So I</p> <p>10 don't know that I've ever implemented a policy that</p> <p>11 upper management said, "You shouldn't do that.</p> <p>12 Reverse that." That's never happened to me. But I</p> <p>13 have a pretty -- I have a pretty comfortable</p> <p>14 relationship with upper management. I'm not afraid to</p> <p>15 call anybody. I'm not afraid to ask advice. They</p> <p>16 probably say I call them too much.</p> <p>17 Q. And -- and in your opinion, why are some</p> <p>18 district defenders leery of speaking with upper</p> <p>19 management?</p> <p>20 A. Well, I think there's -- I think there are</p> <p>21 people who think, like, I want to do it on my own.</p> <p>22 This is all mine. I'm separate. I mean, I think I've</p> <p>23 always grown up with the concept -- or grown up --</p> <p>24 grown up through the law and grown up through the</p> <p>25 system with the concept that it's -- you know, we're a</p>	<p style="text-align: right;">Page 39</p> <p>1 always said, as an office, I'm going to -- and it</p> <p>2 being a big office, I have to. I have to be really</p> <p>3 firm about hours. I have to be really firm about how</p> <p>4 policies go out, and -- and I -- I really think</p> <p>5 keeping the client in mind -- I think a small office</p> <p>6 to attract attorneys will sometimes weigh to keep you,</p> <p>7 I will give you these breaks, and I don't have the</p> <p>8 option of giving people breaks, because everyone would</p> <p>9 get a break, so I -- it's complex, and it probably</p> <p>10 varies office to office.</p> <p>11 But I know in general, there's sort of a</p> <p>12 feeling of -- there can be disconnect. And that's not</p> <p>13 true -- I mean, I certainly am friends with DDs in</p> <p>14 rural offices who have no issue. But for me, it's</p> <p>15 especially easy, because my boss was -- like, Joel was</p> <p>16 my boss forever, and I'm very -- I was very</p> <p>17 comfortable being supervised by him before. I'm very</p> <p>18 comfortable being supervised by him now. And when I</p> <p>19 have tough times, I can call him, and he's easy to</p> <p>20 talk to and he -- he's been there. He ran the</p> <p>21 Kansas City trial office for 20 years, so --</p> <p>22 Q. A couple of other budget questions.</p> <p>23 Generally speaking, you have 35 attorneys in your</p> <p>24 office. Do you think that's enough?</p> <p>25 A. No. No, I don't.</p>
<p style="text-align: right;">Page 38</p> <p>1 statewide system; that, you know, our goals are that</p> <p>2 everyone do well, that everything -- you know, I know</p> <p>3 with Joel and hiring, when he was -- supervised me</p> <p>4 would say, like, well, let the rural office -- you</p> <p>5 know, people who are candidates in multiple offices,</p> <p>6 let the rural offices choose first because it's much</p> <p>7 harder to fill those spots, and I really -- although,</p> <p>8 I have a lot of turnover, I generally have big pools,</p> <p>9 and I'm -- I've not had a pool yet where I've closed</p> <p>10 it and reopened, that I've found candidates that I</p> <p>11 thought would be successful in the office. But I do</p> <p>12 think that there are people who -- they want to run</p> <p>13 their own thing, and then I think there are people who</p> <p>14 are -- you know, management wants to push the</p> <p>15 envelope, wants to serve clients better, and I think</p> <p>16 when you're already overwhelmed, people see that as</p> <p>17 sort of a hostile directive to a certain extent.</p> <p>18 And -- yeah. I mean, we'd have to get deep into</p> <p>19 management theory.</p> <p>20 But some of it is also that, you know,</p> <p>21 people really -- there are managers who really want</p> <p>22 their lawyers to like them, so they'll choose</p> <p>23 friendships with lawyers over they'll choose being</p> <p>24 client centered, or you know, like, oh, we'll let</p> <p>25 everyone leave at 2:00, or we'll let -- and I have</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. In your ideal world, how many additional</p> <p>2 attorneys do you think you would like to have?</p> <p>3 A. 15 to 20.</p> <p>4 Q. And -- and what's the -- the basis for that</p> <p>5 number?</p> <p>6 A. Well, I think it would get attorneys down</p> <p>7 to a caseload of the 30 to 40, which I think is really</p> <p>8 sort of an optimal caseload; and again, it varies</p> <p>9 depending on type of case. We have a lot of serious</p> <p>10 cases in this -- in my office, so the -- it -- you</p> <p>11 know, I -- I don't know if you have a bunch of murders</p> <p>12 and drive-by shootings and things like that that you</p> <p>13 should -- you probably shouldn't have more than 25 or</p> <p>14 20 -- you know, it's hard to say what that -- exactly</p> <p>15 what that number is. But when I look at getting</p> <p>16 people the caseloads, controllable caseloads,</p> <p>17 that's -- that's a number I would come to.</p> <p>18 Q. And you have four investigators on staff.</p> <p>19 Is that enough?</p> <p>20 A. No.</p> <p>21 Q. So how many -- how many additional</p> <p>22 investigators do you think you would need right now</p> <p>23 for the 35 --</p> <p>24 A. For the 35?</p> <p>25 Q. -- lawyers? Yes.</p>

10 (Pages 37 to 40)

<p style="text-align: right;">Page 41</p> <p>1 A. That -- I -- I think -- and I -- I don't</p> <p>2 know about an ideal world. I mean, it would be great</p> <p>3 to have an investigator per two attorneys.</p> <p>4 Q. Okay.</p> <p>5 A. Which is a lot more investigators.</p> <p>6 Q. What do you -- what would you consider a</p> <p>7 reasonable caseload for an investigator?</p> <p>8 A. Honestly, I -- it's -- that's a hard</p> <p>9 question, because I've never -- we've never even been</p> <p>10 a stone's throw away from it. Maybe 50 cases as far</p> <p>11 as, again, with -- at least the structure I have,</p> <p>12 investigators, they don't enter on a case when it</p> <p>13 comes in, so they solely work on attorney requests.</p> <p>14 So if that structure were the same, which I don't</p> <p>15 think is an ideal structure, honestly. I think having</p> <p>16 an investigator assigned to a case with an attorney as</p> <p>17 they come in would be a more ideal structure. If that</p> <p>18 were the case, you'd want to keep it to basically the</p> <p>19 level of where an attorney is at or maybe twice that</p> <p>20 if they're assigned two attorneys, so maybe 50, 60,</p> <p>21 cases, but it -- obviously, I have -- right now, we</p> <p>22 have about 4100 cases that people are entered in, so</p> <p>23 my attorneys -- or my investigators potentially, when</p> <p>24 I'm full staff, working on potentially 1,000 cases at</p> <p>25 the time, which is just -- it's ridiculous.</p>	<p style="text-align: right;">Page 43</p> <p>1 to sign, but she really doesn't provide me any</p> <p>2 administrative support, and it's not that she's not</p> <p>3 working.</p> <p>4 Q. Right.</p> <p>5 A. But it's also -- I feel like the things I</p> <p>6 have her doing office-wide are more useful than having</p> <p>7 her for myself, but I -- I don't -- she does -- when</p> <p>8 I'm hiring, she does -- she does arrange interviews,</p> <p>9 so she does assist me in that way.</p> <p>10 Q. If you had to guess, and I think you</p> <p>11 alluded to this a little earlier, roughly how much</p> <p>12 time would you say you spend on administrative work</p> <p>13 versus substantive legal work?</p> <p>14 A. 75 percent. I mean, if you count -- I got</p> <p>15 to make tables when I write reviews. You know, if --</p> <p>16 if I had someone who could -- a lot of what I do when</p> <p>17 I review people as far as client contact, that</p> <p>18 doesn't -- that wouldn't necessarily have to be done</p> <p>19 by me. It's a -- it's a huge chunk.</p> <p>20 Q. All right. How many -- approximately, how</p> <p>21 many cases per year does your office handle?</p> <p>22 A. It varies year to year, and I -- that</p> <p>23 number, I didn't look at. But I feel like we're right</p> <p>24 around 5,000 cases.</p> <p>25 Q. Do you have any sense of roughly what</p>
<p style="text-align: right;">Page 42</p> <p>1 Q. If you had the number of investigators that</p> <p>2 you needed, do you think you would still need your</p> <p>3 legal assistants?</p> <p>4 A. Yes. The legal assistants -- there's a</p> <p>5 little overlap, but they do a completely different</p> <p>6 job.</p> <p>7 Q. And you have five of them in your office</p> <p>8 right now?</p> <p>9 A. Right.</p> <p>10 Q. Is -- is that enough?</p> <p>11 A. No.</p> <p>12 Q. How many legal assistants do you -- do you</p> <p>13 think would be ideal?</p> <p>14 A. I'd say -- well, fairly similar. I'd say</p> <p>15 an legal assistant to every two lawyers, maybe three</p> <p>16 lawyers, something like that.</p> <p>17 Q. And could you use any additional clerical</p> <p>18 staff?</p> <p>19 A. Yes. Well, I -- you know, I have an office</p> <p>20 manager, so I don't -- I don't have an administrative</p> <p>21 assistant. I don't -- I do all of my own typing. I</p> <p>22 do all my own faxing. I do all of my own filing. I</p> <p>23 do all of my administrative work, with the exception</p> <p>24 of the office manager does -- she does -- she helps</p> <p>25 with bills, like, she codes bills and gives them to me</p>	<p style="text-align: right;">Page 44</p> <p>1 percentage of those are felonies?</p> <p>2 A. The majority of them are felony. We -- we</p> <p>3 carry not a lot of misdemeanors. We -- I don't even</p> <p>4 know if we carry 500 a year.</p> <p>5 Q. And I know you mentioned that you're only</p> <p>6 carrying a couple of probation violation cases right</p> <p>7 now yourself?</p> <p>8 A. Uh-huh.</p> <p>9 Q. How many cases would you say you handle per</p> <p>10 year?</p> <p>11 A. Not more than 100. Maybe 80, 90, something</p> <p>12 like that. It kind of depends on whatever comes up in</p> <p>13 the division. But that's loose, so please don't --</p> <p>14 Q. No. I understand.</p> <p>15 A. Don't impeach me with that number. I -- I</p> <p>16 didn't look at that at all.</p> <p>17 Q. So I just wanted to ask you a few questions</p> <p>18 just about procedure, criminal procedure here. At</p> <p>19 what point is a defendant generally brought before a</p> <p>20 judge for the first time after arrest?</p> <p>21 A. It's usually within a day or two of arrest.</p> <p>22 It's usually -- sometimes it's the next day. I mean,</p> <p>23 the -- our courts do what they call an initial</p> <p>24 appearance, which -- initial arraignment daily, so</p> <p>25 every day, they bring in whoever was arrested, and on</p>

11 (Pages 41 to 44)

<p style="text-align: right;">Page 45</p> <p>1 Monday, they bring whoever was arrested over the 2 weekend.</p> <p>3 Q. And when does a formal arraignment happen?</p> <p>4 A. A formal first arraignment would happen at 5 that first court date.</p> <p>6 Q. Okay. And is bail set at that initial 7 hearing?</p> <p>8 A. Yes.</p> <p>9 Q. Is that -- is bail generally based on a 10 bail schedule?</p> <p>11 A. It goes judge to judge. In Jackson County, 12 years ago, a number of people got together and put 13 recommended bail amounts on what's called a blue 14 sheet. It was printed out on blue sheets, and it -- a 15 lot of judges follow that, but that was really just 16 sort of a bunch of people's best guess. In the last 17 couple years, the Court hired some folks to come in 18 and do a risk assessment instrument, which they -- 19 they put in the -- when someone is brought into jail, 20 they put it -- the questions are derived from 21 questions asked at booking at the jail, and some 22 judges are better about following the risk assessment 23 instrument than others. But it really -- 24 individually, I mean, it's completely whatever the 25 judge -- they also have a bond sheet where the</p>	<p style="text-align: right;">Page 47</p> <p>1 depends on availability of the Court, and sometimes 2 the state has concerns about their witnesses or when 3 they can bring them in. Again, 99 percent of our 4 cases are grand juried, so the prelim setting is 5 really just sort of a --</p> <p>6 Q. I see.</p> <p>7 A. -- formal --</p> <p>8 Q. So at what point does the indictment 9 occur -- you're saying it goes to the grand jury at 10 some point between that initial hearing and the 11 whatever --</p> <p>12 A. No, not usually.</p> <p>13 Q. Okay.</p> <p>14 A. What happens is you go to your first prelim 15 setting, the State sends us a list of offers. 16 Sometimes there's negotiations; sometimes it -- it can 17 be continued over if you're wanting to engage in a 18 plea agreement early or at that step in the process. 19 And sometimes it gets sent over because we're looking 20 at whether people qualify for a diversion, things like 21 that. But if you have a client who says, "I want a 22 trial no matter what," and you request a prelim at 23 that point, the judge would set it over usually about 24 three weeks, depending on what -- what the -- 25 sometimes a prosecutor will say, "Well, we're going to</p>
<p style="text-align: right;">Page 46</p> <p>1 prosecutor can write whatever they want on it, so --</p> <p>2 Q. And the bond sheet is submitted to the 3 Court?</p> <p>4 A. Yes. It's filed usually the same time 5 the -- the complaint is, and we'll list priors, and 6 there's usually a recommendation.</p> <p>7 Q. Can the bail amount be changed after that 8 point?</p> <p>9 A. Yes.</p> <p>10 Q. Defendants are entitled to a preliminary 11 hearing; correct?</p> <p>12 A. Yes.</p> <p>13 Q. If a preliminary hearing occurs, when -- 14 when would it occur?</p> <p>15 A. It would occur -- generally, at that 16 initial appearance setting, the judge will set it out 17 for a prelim setting; although, the expectation 18 generally is not that a prelim is going to happen 19 at -- at that time. Clients are unrepresented at that 20 point, so there's often a request for the public 21 defender to screen, which can we do -- sometimes we do 22 in court that day. And then -- so usually the prelim 23 setting is set a couple of weeks out, and then if a 24 client requests a prelim, it's usually set within a 25 month after that, I would say. It kind of -- it</p>	<p style="text-align: right;">Page 48</p> <p>1 grand jury this." They grand jury every drug case. 2 There's a whole set. They grand jury every sex case, 3 every murder. There are sets of case they always 4 grand jury, and then there's some -- sometimes they'll 5 have a prelim; sometimes they won't. But for the most 6 part, they'll request time and tell the Court 7 they're -- they're going to send it to the grand jury.</p> <p>8 Q. Does the timing of the prelim, or at least 9 the date that's set out for the prelim depend at all 10 on whether the person is in custody?</p> <p>11 A. I do think there are some judges whose -- 12 who do these -- the associate judges who handle this, 13 I think there are some who -- I think they pretty 14 standardly set it out, but I don't know for that first 15 setting if judges do that or not. I know for 16 continuances, they often won't continue something 17 longer when someone's in custody. That, I don't know.</p> <p>18 Q. Okay. Are there any other kinds of 19 pretrial hearings that generally occur in a -- in a 20 criminal case?</p> <p>21 A. Like, preindictment or pre --</p> <p>22 Q. Let's start with preindictment. Sorry.</p> <p>23 A. Okay. We'll start with preindictment. So 24 they have -- the judges will also set things for 25 settlement that we've -- and I'm not sure if she's</p>

12 (Pages 45 to 48)

<p style="text-align: right;">Page 49</p> <p>1 doing this right now, but we've had settlement 2 conferences before they get indicted. So mostly, I 3 think because judges sort of want to clear off the 4 prelim document and sort of group these people that 5 people have indicated might be pleas. And sometimes 6 to give people time -- you know, there are people -- 7 if you -- some people, if they have a DUI, if they get 8 their license back, they might get one deal; they 9 might get another. If they can pay back restitution, 10 they might get one deal; they might get another. Some 11 of it is sometimes giving clients to either make 12 restitution payments, do things like that, get medical 13 records, things that would be persuasive to the 14 prosecutor to change the offer that they are initially 15 giving. 16 And sometimes the Courts -- historically, 17 they always did. Now, there's -- Missouri has 18 judicial time standards, and most judges won't let 19 anything set beyond three months over an associate. 20 And then if -- you know, a client can waive, have a 21 prelim, be bound over, and -- or be indicted, and then 22 they'll go -- they'll be arraigned, and the judges 23 will often then -- there's -- in that same division 24 where they're doing arraignments, he also has a 25 settlement docket, and he'll set cases sometimes by</p>	<p style="text-align: right;">Page 51</p> <p>1 public defenders generally in the room at the initial 2 appearance? 3 A. No. 4 Q. No? 5 A. It -- it depends how and when it's done, 6 but no. And if they are, they're not attentive to 7 what's going on because sometimes they'll have an 8 initial appear -- they'll do an initial appearance at 9 the beginning of a prelim docket, but usually, public 10 def -- if public defender's in the room, they are 11 talking to prosecutors, they're talking to their 12 client, they're -- they're not at the bench with 13 clients. Except, on a rare case, you know, if we have 14 a client who picked up a second case, there's 15 sometimes the attorney assigned to his cases will show 16 up. 17 Q. Do you think it would be helpful to have 18 attorneys at initial appearance -- representing 19 clients at initial appearance? 20 A. I think it's better for the clients. 21 Q. Realistically, would your office be able to 22 staff initial appearances? 23 A. No. I mean, we've tried that, and it is -- 24 when you weigh the attorney time versus -- you know, 25 we weren't really getting bond reductions, we really</p>
<p style="text-align: right;">Page 50</p> <p>1 request, and sometimes it's cases the judge just 2 thinks should settle that they will just set, because 3 I have attorneys who get really frustrated about, 4 well, I -- I just wanted to send it to a trial 5 division, and now, I have an extra appearance. So 6 sometimes it's cases they think should settle where 7 they'll put them on a settlement docket before it 8 moves. After that, it would move to circuit court, 9 and that's when you'd have a pretrial. But the first 10 pretrial is usually -- that's where you pick a trial 11 date, which is generally sometimes six months -- we 12 have judges who will set things out nine months to a 13 year for a trial date. 14 Q. Is that after arraignment? 15 A. Yes. 16 Q. Okay. Is it possible for a defendant to 17 plead guilty at their initial appearance? 18 A. We don't staff it, so I don't know if it -- 19 honestly, I don't know if there are people who -- 20 it's -- I would hope not, because they're all 21 unrepresented. I don't -- I don't know if I've ever 22 seen or heard of a lawyer doing that. Certainly, it 23 better not be my staff. 24 Q. And -- and is the -- so the -- the 25 defendants are unrepresented at that point. Are the</p>	<p style="text-align: right;">Page 52</p> <p>1 weren't getting those things. That discontinued 2 before I took over supervision. But I -- I've 3 staffed -- as an attorney, I've staffed initial 4 appearances before. But I -- I mean, I think it's an 5 opportunity for bond. I think it's an opportunity for 6 your client to say a bunch of stuff that hurts them. 7 I think there's a lot of potentially negative things 8 that could happen by being upper -- unrepresented at 9 really any court appearance. 10 Q. So I wanted to ask you a little bit about 11 that. What are some other things that a client 12 could -- could say or do at that initial appearance 13 that could be harmful to them? 14 A. They could admit facts of what they're 15 charged with, and they do. It's -- all of those -- 16 those judges don't have record -- or they don't have 17 court reporters, but they do -- they tape it, so 18 really, the client could say almost anything. And 19 there is a discussion where they set bond, and clients 20 will say, "Oh, but I could stay with my sister," or 21 there's a discourse that sometimes happen. Sometimes 22 not, and it really depends on the judge. But yeah, 23 there are clients who could admit facts of their case, 24 give up their right to remain silent. 25 Q. Are -- are there -- that being one of them,</p>

<p style="text-align: right;">Page 53</p> <p>1 are there constitutional rights that -- that a</p> <p>2 defendant could waive in that proceeding?</p> <p>3 A. I suspect there are, and again, I haven't</p> <p>4 witnessed an initial appearance in some time. But</p> <p>5 yeah. I mean, there -- there are clients who have</p> <p>6 said, "I did it." There are clients who make all</p> <p>7 kinds of admissions, which clearly is a problem.</p> <p>8 Q. And your office is generally appointed at</p> <p>9 that initial appearance or -- let me -- let me</p> <p>10 rephrase that.</p> <p>11 A. Well, right now --</p> <p>12 Q. Let me rephrase that. At what point in the</p> <p>13 process is your office generally appointed to the</p> <p>14 case?</p> <p>15 A. So it varies. Before the last two months,</p> <p>16 which we'll talk about later. Before the last two</p> <p>17 months, generally, at that hearing, they -- the judge</p> <p>18 asked the public defender to screen, so we would</p> <p>19 screen the clients. And prior to the last -- I guess</p> <p>20 maybe now it's three months, we would -- anyone who</p> <p>21 qualified, we'd enter on pretty much at -- you know,</p> <p>22 we'd take the case, open it, and assign it. Because</p> <p>23 we've had so many concerns about Rule 4, we -- we are</p> <p>24 not entering until the Court is appointing us.</p> <p>25 Q. What is Rule 4?</p>	<p style="text-align: right;">Page 55</p> <p>1 overload." Rule 4 also says that if -- you should</p> <p>2 stop taking cases if you can't -- if you can't handle</p> <p>3 any more. And in fact, taking on more cases is a</p> <p>4 conflict of interest for the current clients you have.</p> <p>5 A lot of my attorneys expressed to me -- and I</p> <p>6 actually ended up having a meeting with every attorney</p> <p>7 individually, and we got to a point where we --</p> <p>8 everyone said, "I can't take more cases," at which</p> <p>9 point I wrote the presiding judge and told him I was</p> <p>10 going to put clients on a postponement list. The</p> <p>11 ethical rules indicate if -- if you are in a spot</p> <p>12 where you can't take more cases, that you should</p> <p>13 postpone representation, which I'm -- I've tried to</p> <p>14 do. Our courts have not -- are upset about us doing</p> <p>15 that and have started to appoint us on -- I think</p> <p>16 we're -- I want to say we're up to 110 appointments.</p> <p>17 Q. Okay. So I have more questions for you</p> <p>18 about that.</p> <p>19 A. Sure.</p> <p>20 Q. The -- the -- when you -- when you</p> <p>21 mentioned screening the cases --</p> <p>22 A. Uh-huh.</p> <p>23 Q. -- that your office is asked to screen the</p> <p>24 cases, does that mean that you're making indigency</p> <p>25 determinations --</p>
<p style="text-align: right;">Page 54</p> <p>1 A. Rule 4 is -- is the Missouri ethical rule</p> <p>2 that -- well, there's a series of them. There's .1</p> <p>3 dash one. But -- but our main concerns, you know,</p> <p>4 we've had -- we have an attorney disciplined and --</p> <p>5 who's on probation, and he was told that caseload</p> <p>6 didn't matter. Under the rules, we're supposed to do</p> <p>7 diligence, which means we're supposed to timely work</p> <p>8 out these cases, which is impossible if you have</p> <p>9 100 cases. Communications, which I've already touched</p> <p>10 on in my reviews. You know, we're supposed to --</p> <p>11 there's no set amount, but you know, is it a</p> <p>12 reasonable amount and with promptness? Which none of</p> <p>13 my lawyers are able to go to the jail promptly or</p> <p>14 respond to most clients' requests in a -- in a prompt</p> <p>15 manner. So it also covers competence, getting</p> <p>16 yourself up to speed on the law, getting yourself --</p> <p>17 you know, if you get a case that involves shot</p> <p>18 splatter, you should be able to get yourself up to</p> <p>19 speed and work on that. Most of my lawyers have cases</p> <p>20 six, nine months before they're even looking for an</p> <p>21 expert. There's a whole host of areas that we're</p> <p>22 falling down under Rule 4.</p> <p>23 So we had an attorney disciplined. A</p> <p>24 number of my attorneys immediately e-mailed me and</p> <p>25 said, "I can't take more cases. I'm ethically at an</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Yes.</p> <p>2 Q. -- at that point?</p> <p>3 A. Right.</p> <p>4 Q. Okay. And you're saying that the -- all of</p> <p>5 the Rule 4 requirements, to your mind, are implicated</p> <p>6 in making decisions about how many of those cases you</p> <p>7 can actually handle or -- or how many of those</p> <p>8 appointments you can actually accept?</p> <p>9 A. Right. Well, I -- at this point, I have</p> <p>10 every lawyer in my office saying they're at capacity</p> <p>11 for what they can ethically handle. I -- so for me --</p> <p>12 I mean, the reason they say they can't handle more</p> <p>13 cases is because of their ethical obligations under</p> <p>14 Rule 4. If -- if they enter a case, and they're</p> <p>15 already at overload, they're in a conflict with their</p> <p>16 current clients, so I would say by entering a case,</p> <p>17 I -- I would say that that's when -- at least for the</p> <p>18 individual attorneys, that's when Rule 4 is -- is --</p> <p>19 would be triggered. I may be wrong about that. I'm</p> <p>20 not the ethics guru, but at least, that's at least the</p> <p>21 approach that we've taken; that right now, we're not</p> <p>22 going to enter on cases to keep us from being in an</p> <p>23 ethical conflict, and you know, possibly looking at</p> <p>24 issues with our license.</p> <p>25 Q. Okay. Just a couple of other procedural</p>

14 (Pages 53 to 56)

<p style="text-align: right;">Page 57</p> <p>1 questions: The -- once you're appointed to -- once</p> <p>2 your office is appointed to a case, are your attorneys</p> <p>3 always present for any preliminary hearing if it</p> <p>4 happens?</p> <p>5 A. They're not always present for any -- I</p> <p>6 guess maybe trial, but aside from that, no. I mean,</p> <p>7 it's ideal. They try to be. But if someone is in</p> <p>8 trial, and a prelim is set, the judge is not going to</p> <p>9 move a preliminary hearing, so they will get coverage</p> <p>10 from another lawyer.</p> <p>11 Q. And if coverage is required, does that</p> <p>12 usually lead to a continuance, or does -- do those</p> <p>13 proceedings tend to go forward?</p> <p>14 A. If it -- if it's a prelim setting --</p> <p>15 Q. Right.</p> <p>16 A. -- and the state actually brought their</p> <p>17 witnesses, it will go forward.</p> <p>18 Q. All right. Is the same true for</p> <p>19 arraignment in circuit court; which is to say, are</p> <p>20 lawyers present for those arraignments?</p> <p>21 A. Not all the time, no.</p> <p>22 Q. Okay. Are there times when -- would an</p> <p>23 arraignment ever go forward without any attorney</p> <p>24 present?</p> <p>25 A. I don't believe so.</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. Do you recognize this document?</p> <p>2 A. Yes.</p> <p>3 Q. And what is it?</p> <p>4 A. It's one of the local Kansas City policies</p> <p>5 from our -- our policies and procedures database.</p> <p>6 Q. Okay. And this is an e-mail from</p> <p>7 Joel Elmer; correct?</p> <p>8 A. Uh-huh.</p> <p>9 Q. And was this sent to all the district</p> <p>10 defenders?</p> <p>11 A. No. This was when Joel was the district</p> <p>12 defender in Kansas City. It was sent to the lawyers</p> <p>13 in the office.</p> <p>14 Q. Okay. And this is -- what -- what was the</p> <p>15 date of this e-mail?</p> <p>16 A. The date is October 13 of 2002.</p> <p>17 Q. And if you go to the second -- third page</p> <p>18 of this document --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- you'll see a document that is labeled</p> <p>21 "MSPD Local Office Policy"?</p> <p>22 A. Uh-huh.</p> <p>23 Q. And what is the effective date of that</p> <p>24 pol -- at the top there?</p> <p>25 A. Oh, five -- is that a -- 6/14 of '06.</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. Okay. And it would be the judge that would</p> <p>2 make the decision to not go forward if there was no</p> <p>3 attorney?</p> <p>4 A. Right. But I -- I would say that, you</p> <p>5 know, we have -- the arraignment docket has usually</p> <p>6 20 people on it or more, and we probably have multiple</p> <p>7 public defenders present, so likely, if we had a</p> <p>8 client there whose attorney was somewhere else, they</p> <p>9 would step in, or attorneys arrange coverage for their</p> <p>10 cases all the time.</p> <p>11 Q. Okay.</p> <p>12 COURT REPORTER: If you get to a stopping</p> <p>13 point --</p> <p>14 MR. WILLIAMSON: We can go off the record</p> <p>15 now.</p> <p>16 VIDEOGRAPHER: Off the record, 10:17 a.m.</p> <p>17 (A brief recess was taken.)</p> <p>18 VIDEOGRAPHER: On the record, 10:27 a.m.</p> <p>19 Q. (By Mr. Williamson) Ms. Petsch, I'm going</p> <p>20 to hand you a document that I'm going to mark as</p> <p>21 Exhibit 1 for identification.</p> <p>22 (Petsch Exhibit 1 was marked for</p> <p>23 identification.)</p> <p>24 Q. Just have a clarifying question.</p> <p>25 A. Uh-huh.</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. So I -- do you -- what is the -- and -- and</p> <p>2 what's the date of -- it looks like the same date;</p> <p>3 correct? Of the -- the e-mail?</p> <p>4 A. The e-mail, yes.</p> <p>5 Q. Right. Is this -- is this a notice that</p> <p>6 was sent out when this policy was created, the -- the</p> <p>7 client contact policy was created, or --</p> <p>8 A. Yeah. So in Kansas City, we have our</p> <p>9 own -- or our own policies and procedures database.</p> <p>10 The other one looks like it's the MSPD, the statewide</p> <p>11 policies and procedures database.</p> <p>12 Q. Okay.</p> <p>13 A. So my guess is Joel sent out that e-mail,</p> <p>14 added it to our local database, and then it was later</p> <p>15 added to the -- well, so Joel had sort of been on the</p> <p>16 forefront, I guess. He -- he'd had his own policies</p> <p>17 and procedures database before we had a statewide</p> <p>18 local one, so I think he added it. I'm not sure of</p> <p>19 the timing of when the local office policy database</p> <p>20 started, but my guess is that's a discrepancy.</p> <p>21 Q. Okay.</p> <p>22 A. There was a point when they wanted to move</p> <p>23 everything off the local servers into a statewide</p> <p>24 server, I think. Joel really would be the person to</p> <p>25 ask about the timing of that.</p>

15 (Pages 57 to 60)

<p style="text-align: right;">Page 61</p> <p>1 Q. Okay. Thank you.</p> <p>2 Now, you've talked a bit about client</p> <p>3 contact already.</p> <p>4 A. Uh-huh.</p> <p>5 Q. And you mentioned that your lawyers are not</p> <p>6 able to meet with the MSPD requirement of -- not</p> <p>7 always able to meet the MSPD requirement with respect</p> <p>8 to client contact; correct?</p> <p>9 A. Correct.</p> <p>10 Q. When that client contact does occur, where</p> <p>11 does it usually occur?</p> <p>12 A. We have what we called our qualifying</p> <p>13 contact, so if someone's in jail, it should occur in</p> <p>14 jail. If you have someone out of custody, it can be</p> <p>15 by phone, by letter, office meeting.</p> <p>16 Q. And are those meetings confidential?</p> <p>17 A. They likely should be. I don't -- I --</p> <p>18 it's almost impossible to have a confidential meeting</p> <p>19 at the jail. The jail is not set up in such a way</p> <p>20 that -- they have some attorney rooms. Some of them</p> <p>21 are permanently locked. They're difficult to get to.</p> <p>22 But most of the time, you have a meeting in a room</p> <p>23 close to this size. The jail has professional</p> <p>24 visitation, but it's very rare that you're in a</p> <p>25 professional visitation room alone, so --</p>	<p style="text-align: right;">Page 63</p> <p>1 have clients coming up to trial, you're seeing them</p> <p>2 more, you're wanting information, you're doing the</p> <p>3 investigation that you should have been doing all</p> <p>4 along; and some clients are okay with that, and some</p> <p>5 clients, you've already broken it. You've broken what</p> <p>6 should be an attorney-client relationship, and you</p> <p>7 will probably never repair that. So then you -- your</p> <p>8 client then won't trust you when you say an offer is</p> <p>9 good. They won't trust you when you say, I talked to</p> <p>10 this witness, and they're saying something contrary to</p> <p>11 what you think you're saying. They just stop</p> <p>12 believing you, and that happens all the time.</p> <p>13 Q. Have you ever had such an experience</p> <p>14 yourself in -- in any cases that you were handling?</p> <p>15 A. It's been a while since I've handled trial</p> <p>16 cases, so I'm thinking back. Sure, yes. I've</p> <p>17 definitely had clients who were -- you know, you said</p> <p>18 you'd be here next week, and it's just sort of fed</p> <p>19 into that level of distrust.</p> <p>20 Q. And you testified earlier that part of why</p> <p>21 you stopped taking trial cases was that you felt like</p> <p>22 you couldn't provide the kind of representation that</p> <p>23 you thought was necessary?</p> <p>24 A. Right.</p> <p>25 Q. Would that include communication with</p>
<p style="text-align: right;">Page 62</p> <p>1 Q. So those conversations tend to be within</p> <p>2 earshot of other people?</p> <p>3 A. Yes.</p> <p>4 Q. So without getting into specifics or -- or</p> <p>5 compromising any attorney-client privilege, are you</p> <p>6 aware of any situations where the representation of</p> <p>7 the client by an attorney in your office was -- was</p> <p>8 hampered by their inability -- the lawyer's inability</p> <p>9 to communicate consistently with the client?</p> <p>10 A. Yes -- well, I -- I mean, it -- a lot of</p> <p>11 the problem is intangible, so if you're seeing a</p> <p>12 client regularly, you're building client relationship,</p> <p>13 they trust you, you -- you come back when you say</p> <p>14 you're going to come back, you follow through when you</p> <p>15 say you're going to, and if you're unable to do those</p> <p>16 things, there's a lot of -- there there's a lot of</p> <p>17 mistrust with our clients and a government lawyer</p> <p>18 anyway, so that is always on the table. And most of</p> <p>19 my attorneys sort of -- well, triage their cases. So</p> <p>20 they're working on the cases that are coming to trial.</p> <p>21 They have a whole host of people who have trials nine</p> <p>22 months out who they're virtually ignoring. You know,</p> <p>23 they're not seeing consistently. They're calling all</p> <p>24 the time. And they're focused on the clients that are</p> <p>25 coming to trial. So they're constantly -- when you</p>	<p style="text-align: right;">Page 64</p> <p>1 clients?</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 A. Well, the clients I eventually handed over,</p> <p>5 I hadn't seen in three or four months, and I -- I</p> <p>6 really with the best of intentions thought I was going</p> <p>7 to see them, and then --</p> <p>8 Q. And this --</p> <p>9 A. -- and everything else filled that time.</p> <p>10 Q. And this was an experienced attorney;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. You just mentioned investigation. I</p> <p>14 understand this may be a little hard to -- to</p> <p>15 quantify, so I'll ask you to just do the best you can.</p> <p>16 But it -- in what fraction or percentage of -- of the</p> <p>17 cases that come into your office do your attorneys</p> <p>18 interview all of the necessary witnesses?</p> <p>19 A. I -- I really -- it would really be a stab,</p> <p>20 but --</p> <p>21 Q. Would you say --</p> <p>22 A. I'm guessing -- I'm guessing people don't</p> <p>23 interview all the necessary witnesses unless they're</p> <p>24 going to trial. So last year, we tried 59 cases, so</p> <p>25 59 of those however many thousand cases we had, I</p>

16 (Pages 61 to 64)

<p style="text-align: right;">Page 65</p> <p>1 can't even say that they interviewed every necessary 2 witness in those trials. Now, we have a number of 3 trials that either get dismissed or get pled the day 4 of trial, so if I were to presume that they were 5 interviewing every necessary witness, which I can't be 6 100 percent sure of, you know, that's, like, one 7 percent.</p> <p>8 Q. How often do your attorneys depose 9 witnesses?</p> <p>10 A. I'm told we depose them more than other 11 offices, but I don't -- I don't think it's more than 12 five percent of our cases.</p> <p>13 Q. Is that because attorneys don't have time 14 to depose witnesses?</p> <p>15 A. Well, I think it's -- yeah. Part of triage 16 that they don't have time, or by the time -- you know, 17 there's a game that's played, so you talk to the 18 State, and you want them to produce people, and the 19 State says, "Oh, we have these people. We'll produce 20 them." And then you get closer and closer to a trial 21 setting, and then sometimes, they'll say, "Oh, we 22 can't find them. You'll have to do it," and then -- I 23 mean, you have to give them -- you have -- there's a 24 seven-day notice requirement, and if you want 25 paperwork, there's a ten-day notice requirement. You</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. Why is that?</p> <p>2 A. Because if -- there's no better way to 3 impeach someone if they change their statement, and 4 people change their statements all the time.</p> <p>5 Q. Do you think there is sufficient money 6 available for depositions if your lawyers were able to 7 take more of them?</p> <p>8 A. That's really an upper level call. I mean, 9 I've not been refused a deposition. I've not -- I've 10 not had an attorney refuse a deposition in my 11 experience in management. I -- I don't -- I -- that 12 would be a -- you know, Kathy Leer question. How many 13 depositions can the -- if everybody took them, how 14 many could the system absorb? I have no idea.</p> <p>15 Q. Okay. Got it. 16 How often would you say that your lawyers 17 visit crime scenes?</p> <p>18 A. Not -- I wouldn't say often. I mean, I 19 definitely encourage people to go, and certainly, if 20 they're in trial. But again, like I said, we're 21 trying less than one percent of our cases, and I 22 don't -- I don't know that every lawyer -- when I 23 second chair lawyers, I insist on it. I've drug them 24 out to all kinds of places, but they -- I don't think 25 every lawyer goes to visit a crime scene in every</p>
<p style="text-align: right;">Page 66</p> <p>1 you start pushing up to your trial dates. And again, 2 I mean, it's not as if the attorneys are doing nothing 3 while their -- you know, they're in court or -- 4 they're very busy. These dates sneak up on people all 5 the time, yes. And so then they get to a point 6 where -- I mean, strategically, if the State waits, 7 they can control whether you take a depo or not just 8 by the timing of it and if they can sort of -- and I 9 have attorneys who notice it up, but it also means -- 10 noticing up a depo means you have to serve them, so it 11 means you have to find them. Hopefully, the discovery 12 response is adequate. We get a lot of discovery 13 responses that the -- all these witnesses live at the 14 Jackson County Prosecutor's Office, and -- and then 15 it's -- you have to hope that they'll produce folks. 16 So there's a lot of logistics to even getting a 17 person -- having a depo set and getting a person that 18 takes time and energy and advanced notice and advanced 19 preparation.</p> <p>20 Q. How important do you think depositions are 21 to a case, criminal case?</p> <p>22 A. I would -- given my druthers, I would have 23 deposed every witness in every trial I ever had, and I 24 would encourage every lawyer to do that if they have 25 that possibility.</p>	<p style="text-align: right;">Page 68</p> <p>1 trial.</p> <p>2 Q. Is that one of the things that you tried to 3 do when you were handling a trial docket?</p> <p>4 A. Yes.</p> <p>5 Q. Was it difficult to do that on all your 6 cases?</p> <p>7 A. On every case, yeah. It was impossible to 8 do on every case. But yes, I -- I definitely -- 9 there's a lot to be learned by going to a crime scene.</p> <p>10 Q. To what extent do your lawyers depend on 11 investigators to identify witnesses, for example?</p> <p>12 A. Identify them?</p> <p>13 Q. Identify -- to -- to find witnesses that 14 are not --</p> <p>15 A. Okay.</p> <p>16 Q. -- mentioned in the police report.</p> <p>17 A. Probably to some -- investigators generally 18 do what is requested. So, you know, if you meet with 19 a client who says, "Here are these witnesses. Find 20 them" -- I mean, I certainly would recommend that 21 investigators talk to the client, because a lot of 22 times, directions are, like, you know, the yellow 23 house down the street from this liquor store or 24 something. But I think -- I -- there are 25 investigators who do, while interviewing a witness,</p>

17 (Pages 65 to 68)

<p style="text-align: right;">Page 69</p> <p>1 uncover that there are other witnesses or there's</p> <p>2 someone in the house that they would sort of on their</p> <p>3 own follow through, but I would say that's a very</p> <p>4 small number.</p> <p>5 Q. So do investigators generally talk to --</p> <p>6 interview clients without the lawyer present?</p> <p>7 A. I don't know about generally. They</p> <p>8 certainly can -- you know, no lawyer has ever said,</p> <p>9 you can't -- and I certainly -- when I was busy would</p> <p>10 say, "Oh, well" -- you know, an investigator would</p> <p>11 say, "I went here, this didn't work out." And I'm</p> <p>12 like, "Well, just go and talk to the client yourself</p> <p>13 and see what they have to say about that."</p> <p>14 Q. Okay. So generally speaking, do attorneys</p> <p>15 in your office have the time and resources to</p> <p>16 investigate cases in the way that you think is</p> <p>17 required?</p> <p>18 A. No.</p> <p>19 Q. And -- and is that opinion based on your</p> <p>20 personal experience?</p> <p>21 A. My personal -- my personal experience as a</p> <p>22 lawyer and my personal experience of supervising and</p> <p>23 reviewing and looking at the work that my own lawyers</p> <p>24 do.</p> <p>25 Q. Okay. Again, without getting into any</p>	<p style="text-align: right;">Page 71</p> <p>1 Sometimes they haven't -- you know, they don't have a</p> <p>2 closing written out. They have -- you know,</p> <p>3 there's -- there's other areas on that as well.</p> <p>4 Q. How frequently do attorneys in your office</p> <p>5 request discovery from the State?</p> <p>6 A. Well, we always file a general request at</p> <p>7 arraignment time, which is what the rules say, and</p> <p>8 then I have other -- you know, I have other lawyers</p> <p>9 who will file further requests. I have lawyers who</p> <p>10 move for sanctions. I have lawyers who, you know,</p> <p>11 will ask for a bill of particulars, which I think</p> <p>12 falls somewhat in line with the discovery request, but</p> <p>13 probably not to the level -- I mean, there's also a</p> <p>14 lot of informal, do you have this, do you -- can you</p> <p>15 get this? And they're, oh, yeah, well, that's -- you</p> <p>16 didn't get that -- I mean, there's a lot of sort of</p> <p>17 informal talking with the State about what people do</p> <p>18 and don't have. But the -- the number of motions to</p> <p>19 compel, I wouldn't say it's a significant number, but</p> <p>20 there are definitely lawyers who -- some lawyers who</p> <p>21 do file them.</p> <p>22 Q. Okay. I want to talk just a little bit</p> <p>23 about expert witnesses, so you testified earlier</p> <p>24 that -- I believe you testified that often, attorneys</p> <p>25 don't realize they need an expert until late in the</p>
<p style="text-align: right;">Page 70</p> <p>1 specifics, are you aware of cases in which the</p> <p>2 representation of the client by an attorney in your</p> <p>3 office was -- was hampered by their inability to</p> <p>4 investigate a case sufficiently?</p> <p>5 A. Yes.</p> <p>6 Q. Do you think that happens regularly?</p> <p>7 A. Depends what your definition of "regularly"</p> <p>8 is. I would say -- and if we're just purely talking</p> <p>9 investigate -- you know, when someone goes to trial,</p> <p>10 there's -- you know, investigation is an aspect,</p> <p>11 talking to people, and then there's the prep that</p> <p>12 comes out of the investigation or getting exhibits</p> <p>13 that you otherwise wouldn't have. I would say that</p> <p>14 that happens regularly, that -- that attorneys go to</p> <p>15 trial not fully prepared.</p> <p>16 The investigation aspect of it, I would</p> <p>17 probably say maybe ten percent, five to ten percent,</p> <p>18 somewhere in there if I were to give a rough estimate,</p> <p>19 and that's really just from talking to team leaders to</p> <p>20 say, like, "Oh, so-and-so hadn't talked to this</p> <p>21 person." It -- it's more feedback when I have team</p> <p>22 leaders who are like, I'm second chairing this person</p> <p>23 in trial, and I'm somewhat alarmed by the -- the lack</p> <p>24 of level of preparation, both investigation-wise, and</p> <p>25 sometimes they haven't developed a theory of the case.</p>	<p style="text-align: right;">Page 72</p> <p>1 case?</p> <p>2 A. Right.</p> <p>3 Q. How often do you think that occurs? And</p> <p>4 again, I understand that you can't quantify.</p> <p>5 A. Right. Well, it's hard, because usually,</p> <p>6 you already have to be trial bound. And again, a lot</p> <p>7 of -- if you knew you needed an expert sooner, more</p> <p>8 cases might be trial bound. If -- and so this is only</p> <p>9 the cases that are already trial bound that you'll</p> <p>10 meet with someone, and you'll talk about -- you'll be</p> <p>11 looking at the case with them. And I know more than</p> <p>12 once, I've -- we've continued cases because it's like,</p> <p>13 well, maybe you need an eyewitness ID expert.</p> <p>14 Maybe -- you know, maybe that's something you should</p> <p>15 look at.</p> <p>16 And with newer attorneys, some of them</p> <p>17 don't even know that's possible. They're just, I'm</p> <p>18 going to -- I didn't -- oh, I didn't realize. And</p> <p>19 then, you know, there's a scramble to find one.</p> <p>20 Experts are difficult to match up their availability</p> <p>21 with whatever the case -- Court has already set or</p> <p>22 getting the Court to set something or continue it to</p> <p>23 that availability. So I don't know the number we miss</p> <p>24 because people aren't spotting the issue that it's a</p> <p>25 possibility. But I've definitely had, in the last</p>

18 (Pages 69 to 72)

<p style="text-align: right;">Page 73</p> <p>1 year, at least two people that I talked to about, as 2 they -- I'm like, "Oh, tell me about your trial case." 3 And as we're talking about it, "Well, have you 4 considered this?" "Oh." It definitely happens. I 5 can only -- and I don't -- it would be more of -- I 6 guess I'd have to talk to my team leaders about how 7 many times they push people toward experts. 8 Q. And those requests go through the central 9 office? 10 A. Right. Well, they -- they get prove -- 11 approved at a preliminary level by myself, and then 12 generally, Ellen Blaugh approves most of the -- I 13 think the experts. But there were certain people, we 14 have a -- our training director has done a lot of 15 eyewitness, so there are certain people that you talk 16 to if you have certain issues or are helpful pointing 17 you towards experts. 18 Q. Do you have a sense of over the course of a 19 year, how many experts are retained by -- by your 20 office, generally? 21 A. I key -- I keep a spreadsheet, but it -- it 22 also -- it includes all the experts, so it includes 23 court reporters and interpreters and people that we 24 use all the time. 25 Q. I see.</p>	<p style="text-align: right;">Page 75</p> <p>1 A. You mean, like, housing and things like 2 that? 3 Q. Correct. 4 A. So some of our investigators end up 5 doing -- you know, they'll have a -- a connection at 6 the Salvation Army, they'll have something like that. 7 Years ago, we -- well, we had a alternative sentencing 8 expert, who I believe is a master's in social work, 9 who I don't -- I don't -- I was -- I didn't 10 supervise -- I wasn't the supervisor at the office at 11 the time. I don't think he was technically on staff. 12 He was supposed to be shared by a region, which -- and 13 you could get him to write reports, you know, to make 14 arguments to the judge, and we have nothing like that 15 any more; which for the attorneys that used them, and 16 again, that was a smaller number of people who were 17 aware -- aware and planned ahead to use that resource, 18 they were very disappointed when, money-wise, he got 19 cut. 20 Q. Okay. You mentioned interpreters. Are 21 interpreters generally provided by the Court? 22 A. When you're in court. 23 Q. When you're not in court, do lawyers have 24 access to interpreters in order to communicate with 25 their clients?</p>
<p style="text-align: right;">Page 74</p> <p>1 A. So I don't -- I couldn't tell you, like, 2 specialized experts. I mean, I could go back and look 3 at the spreadsheet and see when entries were made. 4 But also, I get a lot of requests that people don't 5 actually use the expert, because they'll get an offer, 6 and then they'll plead it without ever ac -- actually 7 engaging and using those funds. 8 Q. Okay. 9 A. But true experts, not as many as you would 10 think with the number of cases. 11 Q. And would you say there are instances where 12 an attorney will decide not to pursue an expert 13 because they just don't have the time? 14 A. I believe that happens, yes. 15 Q. And would the failure to retain an expert 16 be included in the -- in the sort of list of things 17 you mentioned that hamper representation by your 18 attorneys? 19 A. Yes. 20 Q. You mentioned that you don't have any 21 social workers on staff; correct? 22 A. Correct. 23 Q. Are there resources available for attorneys 24 to assist them in -- in locating resources for their 25 clients?</p>	<p style="text-align: right;">Page 76</p> <p>1 A. We hire them, so yes. I mean, they have to 2 request funds, and they have to set up a meeting, and 3 they have to -- but yes. They do have interpreters, 4 provided you can find an interpreter in the -- I mean, 5 we have some languages where we really struggle to 6 even find an interpreter to communicate. 7 Q. What's the most common foreign language 8 that you encounter? 9 A. Spanish. 10 Q. And what are the other, if you can think of 11 them, the other languages that tend to -- 12 A. Well, in sign language, we have client -- 13 we've definitely hired sign language. Vietnamese, we 14 had a client who -- diga (phonetic). So Kansas City 15 has a pretty -- there's a lot of people from a lot of 16 countries. I had a Korean -- for example, I had a 17 Korean client, and the interpreter we found was really 18 bad, and I lucked out in that I had a law student that 19 summer who was born in Korea and spoke Korean fluently 20 and would tell me how horrible the interpreters were. 21 Because there's interpreters, and then there's 22 certified interpreters, none of whom a lot of the -- 23 they don't understand legal terms. There's a lot 24 of -- so you can hire someone and still have them not 25 be very good. I know for trial dates, the Court was</p>

19 (Pages 73 to 76)

<p style="text-align: right;">Page 77</p> <p>1 plan -- flying in someone from DC and somewhere else</p> <p>2 so that -- that we had qualified interpreters for</p> <p>3 those languages, but there's a variety of -- of</p> <p>4 languages. Spanish, again, is the most prevalent.</p> <p>5 Q. Are you aware of any cases where you needed</p> <p>6 an interpreter, but you weren't able to get one?</p> <p>7 A. Well, I think we've always gotten someone</p> <p>8 to be able to show up. A lot of people have question</p> <p>9 as to how the interpreter -- whether what they were</p> <p>10 saying was actually being interpreted or not.</p> <p>11 Q. Okay. You said that you -- you can't</p> <p>12 recall ever having a request for a deposition turned</p> <p>13 down for money reasons?</p> <p>14 A. Not that I recall, no.</p> <p>15 Q. Are there other requests that you can</p> <p>16 recall having been denied for resource reasons?</p> <p>17 A. Yes.</p> <p>18 Q. What kinds of requests might you get a</p> <p>19 denial on?</p> <p>20 A. So I've been denied on forensic testing</p> <p>21 because they -- our IT department has gone through</p> <p>22 different incarcerate -- incarcerations --</p> <p>23 different -- different staffings and people with -- so</p> <p>24 I've had people ask for sort of forensic -- computer</p> <p>25 forensic stuff or phone forensics, and they've said,</p>	<p style="text-align: right;">Page 79</p> <p>1 in the -- the -- the rate at which those requests are</p> <p>2 being approved in -- in recent months?</p> <p>3 A. No.</p> <p>4 Q. Okay.</p> <p>5 A. I don't think so.</p> <p>6 Q. Okay. On average, how frequently would you</p> <p>7 say your attorneys file suppression motions in their</p> <p>8 cases?</p> <p>9 A. I think they file them pretty regularly on</p> <p>10 cases that are in the process of going to trial. I</p> <p>11 don't -- there are people who spot suppression issues</p> <p>12 that they think are sort of definitive for the case,</p> <p>13 you know, either suppressed, and you have a case --</p> <p>14 you have an issue for trial or you don't.</p> <p>15 Q. So when you say they're filed -- often</p> <p>16 filed in cases that are headed for trial, does that</p> <p>17 mean that the suppression motions are generally not</p> <p>18 filed early on in the case?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And do you think that's because</p> <p>21 lawyers don't realize early in the case that a</p> <p>22 suppression motion might be appropriate, or are there</p> <p>23 other reasons?</p> <p>24 A. Yeah. I think sometimes it's a -- they</p> <p>25 just haven't looked at all the discovery and watched</p>
<p style="text-align: right;">Page 78</p> <p>1 "use in-house people" or things along those lines.</p> <p>2 But you have to craft your requests very specifically,</p> <p>3 so I've definitely had people turned down because they</p> <p>4 didn't craft it correctly, or they couldn't -- and</p> <p>5 then I've also had people where -- but in -- in</p> <p>6 general, I -- my feeling is that MSPD tries to get you</p> <p>7 the resources that they can, but they are going to try</p> <p>8 to do it in the most economical way possible, so --</p> <p>9 you know, there's a list of court reporters, and we're</p> <p>10 supposed to call the cheapest one first, which can be</p> <p>11 really -- my -- my lawyers probably -- one of those</p> <p>12 things that people complain about -- upper management</p> <p>13 about because it is -- it can be very time-consuming</p> <p>14 to go through a list of three people, when you kind of</p> <p>15 know that this court reporter is always available or</p> <p>16 something along those lines.</p> <p>17 Q. And -- and do attorneys in your office</p> <p>18 receive any guidance about when it's appropriate to</p> <p>19 make some sort of expense request, given the budgetary</p> <p>20 constraints?</p> <p>21 A. Well, I encourage people to request -- I --</p> <p>22 I don't really factor budget into it. I tell people</p> <p>23 to request -- if you think it's necessary for a case,</p> <p>24 I'll tell them to request it.</p> <p>25 Q. And have you -- have you noticed any change</p>	<p style="text-align: right;">Page 80</p> <p>1 all the dash cam. You know, some of it -- I mean,</p> <p>2 usually, a police report is written in a way that is</p> <p>3 more positive -- or what the police -- police</p> <p>4 officer's version of events are. And then to have --</p> <p>5 take the time to watch the video and listen to how</p> <p>6 things are actually said. Because the police officer</p> <p>7 will just say, "he consented," and then it's like,</p> <p>8 well, but how was the timing of consent? How did --</p> <p>9 you know, sometimes that -- and -- and also sometimes</p> <p>10 getting air tapes, because that matters too. So those</p> <p>11 levels of investigation are the details, especially on</p> <p>12 something like suppression where, is there consent,</p> <p>13 how did that happen, the time line is very important.</p> <p>14 I think attorneys just don't have time to</p> <p>15 dig into the discovery until they have this pressure</p> <p>16 of a trial sort of looming on them. I mean, there are</p> <p>17 judges who set deadlines, as far as suppression</p> <p>18 motions should be filed by this date, and I --</p> <p>19 attorneys will then use that as their deadline if they</p> <p>20 think they're going that route.</p> <p>21 Q. And is -- is the same generally true for</p> <p>22 other pretrial motions?</p> <p>23 A. Yes.</p> <p>24 Q. Let me rephrase. Are -- how frequently</p> <p>25 would you say your attorneys file other pretrial</p>

20 (Pages 77 to 80)

<p style="text-align: right;">Page 81</p> <p>1 motions aside from suppression motions?</p> <p>2 A. I'd say the bulk of them are filed in the</p> <p>3 month of trial or the month before. I mean, there are</p> <p>4 some exceptions, but those are exceptions.</p> <p>5 Q. And when you were handling your own cases,</p> <p>6 was the same true for you in terms of the timing of</p> <p>7 filing?</p> <p>8 A. Yes.</p> <p>9 Q. Again, without getting into any kind of</p> <p>10 specifics or asking you to -- not asking you to</p> <p>11 compromise any attorney-client privilege, can you</p> <p>12 think of any instances where representation by one of</p> <p>13 your attorneys was -- was hampered by their inability</p> <p>14 to file necessary motions, pretrial motions?</p> <p>15 A. Yes. Well, that's a common client</p> <p>16 complaint, I mean, when clients call. Clients have a</p> <p>17 lot of ideas about what you should file. Some of them</p> <p>18 are on point; some of them are not. But there's a lot</p> <p>19 of -- and even sometimes bond motions. Filing motions</p> <p>20 indicates the client as a tangible sort of evidence</p> <p>21 that you're -- you're fighting that your -- you are</p> <p>22 lawyering for that client. And if the client is not</p> <p>23 seeing any of that for months and months, it certainly</p> <p>24 affects the relationship.</p> <p>25 Q. And to the extent that your lawyers are not</p>	<p style="text-align: right;">Page 83</p> <p>1 DUI, so maybe one.</p> <p>2 Q. Okay. And how about felony sex offenses?</p> <p>3 How often do those go to trial?</p> <p>4 A. More frequently.</p> <p>5 Q. Okay. And those are A, B felonies; right?</p> <p>6 A. Usually, yeah. I mean, we do have some,</p> <p>7 you know, child pornography -- there's some stuff that</p> <p>8 are, but for the most part, they are serious, or in</p> <p>9 Missouri, they're unclassified, which is --</p> <p>10 Q. Okay. To your knowledge, has an attorney</p> <p>11 in your office ever waived an opening or closing</p> <p>12 argument?</p> <p>13 A. I'm not aware of anyone who has waived a</p> <p>14 closing argument. I do believe I've had attorneys</p> <p>15 waive opening argument before. They're supposed to</p> <p>16 let me know if they're doing that, because I</p> <p>17 discourage that, but I think there are attorneys who</p> <p>18 have done that, yes.</p> <p>19 Q. Is that something that you ever did when</p> <p>20 you -- in your -- in your trial practice days?</p> <p>21 A. Never. I've never waived an opening or a</p> <p>22 closing.</p> <p>23 Q. So in your opinion, do you believe that the</p> <p>24 attorneys in your office have the time and resources</p> <p>25 to prepare adequately for trial?</p>
<p style="text-align: right;">Page 82</p> <p>1 filing necessary pretrial motions, would you say that</p> <p>2 that's because they don't have the time or resources</p> <p>3 to make that happen?</p> <p>4 A. Yes.</p> <p>5 Q. You said that your office took 59 cases to</p> <p>6 trial last year?</p> <p>7 A. Last -- in '16. I think we're -- we're</p> <p>8 down -- I have two people in trial. I think we're at</p> <p>9 around 49, 48, something, this year, and that's</p> <p>10 adult -- I mean, that doesn't include our juvenile</p> <p>11 trial, which is a bench trial.</p> <p>12 Q. Uh-huh.</p> <p>13 A. But -- and that's only jury trials. We</p> <p>14 don't do a lot of bench trials. But 59 in 2016,</p> <p>15 correct.</p> <p>16 Q. And are those mostly A, B felonies?</p> <p>17 A. Mostly, but we certainly have tried some</p> <p>18 C and D, and actually, we get the best results out of</p> <p>19 C and D felonies, but we don't try very many of them.</p> <p>20 Q. How often to you go to trial on</p> <p>21 misdemeanors?</p> <p>22 A. I don't know -- I don't know if we tried a</p> <p>23 misdemeanor case this year or last year. We had a</p> <p>24 felony that became a misdemeanor, but I don't -- a</p> <p>25 standalone misdemeanor -- well, we -- yeah, we had a</p>	<p style="text-align: right;">Page 84</p> <p>1 A. No.</p> <p>2 Q. Do you believe that they have adequate</p> <p>3 resources and time to prepare for sentencings?</p> <p>4 A. No.</p> <p>5 Q. What kind of work might go into preparing</p> <p>6 for a sentencing in an ideal case?</p> <p>7 A. An ideal case? Well, I mean, there are</p> <p>8 sentencing experts. I think bringing in an sentencing</p> <p>9 expert would be ideal. I mean, I would do that every</p> <p>10 time if the resources were available and -- and you</p> <p>11 could do that. I think developing a sentencing</p> <p>12 memorandum. I know a lot of federal public defenders</p> <p>13 will do video, which we -- I don't -- I don't have a</p> <p>14 single lawyer who has ever done that. But also, you</p> <p>15 know, contacting witnesses that can talk about your</p> <p>16 client's background, that can bring a different</p> <p>17 perspective to the jury, getting to them ahead of</p> <p>18 time, subpoenaing them, having time to really develop</p> <p>19 what they would actually say.</p> <p>20 Q. And how much of that work tends to actually</p> <p>21 happen on a -- among your -- your lawyers?</p> <p>22 A. Very little.</p> <p>23 Q. And would you say that there have been</p> <p>24 instances where an attorney's representation at</p> <p>25 sentencing was adversely affected by their inability</p>

21 (Pages 81 to 84)

<p style="text-align: right;">Page 85</p> <p>1 to -- to prepare for the sentencing adequately?</p> <p>2 A. Yes.</p> <p>3 Q. And you believe that some of your clients</p> <p>4 could have gotten better outcomes had their attorneys</p> <p>5 been able to prepare?</p> <p>6 A. Yeah. Obviously, that's -- that's a</p> <p>7 prediction, but I think especially when we have jury</p> <p>8 sentencing, and we have the ability to -- I think you</p> <p>9 have a lot of opportunity -- a lot of judges kind of</p> <p>10 will decide this case deserves this, or that deserves</p> <p>11 that. But when you have jury sentencing, I think</p> <p>12 those witnesses really matter.</p> <p>13 Q. You talked a little bit earlier about</p> <p>14 guilty pleas or offers for plea deals. How much time</p> <p>15 would you say your lawyers spend working on a case</p> <p>16 before advising a client about whether or not to plead</p> <p>17 guilty?</p> <p>18 A. Well, that would vary. But I can tell you,</p> <p>19 the State e-mails us the offers before prelim,</p> <p>20 probably sometimes before our attorneys have met with</p> <p>21 clients. At the prelim docket, the judge will ask on</p> <p>22 the record what the offer is, so I assume most</p> <p>23 attorneys are conveying a plea offer their initial</p> <p>24 meeting. One, because it's there, and they feel some</p> <p>25 legal obligation. And two, if they don't, and the</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. Are -- are they instructed to do that, as</p> <p>2 far as you know?</p> <p>3 A. I don't -- I don't know about instructed,</p> <p>4 but I -- I certainly, you know, don't encourage</p> <p>5 pressuring your client to plead on a case you've done</p> <p>6 no work on.</p> <p>7 Q. Okay.</p> <p>8 A. And I -- I -- I have -- I have what's</p> <p>9 called a first-time felon policy for -- that</p> <p>10 attorneys, before they plead someone to a felony who</p> <p>11 is not already a felon, they have to actually meet</p> <p>12 with me and talk to me about what work they've done.</p> <p>13 And the Courts hate it, and the judges complain about</p> <p>14 me micromanaging and the prosecutors, everybody hates</p> <p>15 it. Although, for me, I like it. As a manager, I</p> <p>16 like to see what -- what people are doing and how</p> <p>17 they're evaluating cases. But I also think becoming a</p> <p>18 felon is a life-changing event, and it's pretty</p> <p>19 important. In an ideal world, I'd meet with every</p> <p>20 lawyer before they plead anyone to any felony to have</p> <p>21 an idea of what they were doing on cases. I</p> <p>22 personally don't have time to do that.</p> <p>23 Q. Is that --</p> <p>24 A. So --</p> <p>25 Q. Sorry. Go ahead.</p>
<p style="text-align: right;">Page 86</p> <p>1 judge springs it on your client for the first time in</p> <p>2 court, your client is going to think you withheld</p> <p>3 something. So whether they even -- I mean, they're</p> <p>4 obligated to convey plea offers, but -- especially in</p> <p>5 Jackson County, the -- what is the offer is very</p> <p>6 central to what our Courts expect.</p> <p>7 Q. And -- and do the prosecutors e-mail you</p> <p>8 those orders in all types of cases, or are we talking</p> <p>9 just felonies?</p> <p>10 A. I would say all types -- I mean, they just</p> <p>11 go through the docket sheet, and they give you a list.</p> <p>12 Now, some serious case, they'll write "no offer," or</p> <p>13 something like that. But I mean, they -- they all get</p> <p>14 personally e-mailed to me, which I then send out to</p> <p>15 the office. But it's -- it generally -- most types of</p> <p>16 cases. Some serious -- at a prelim docket, you're</p> <p>17 probably not going to get a sex case offer, you're</p> <p>18 probably not going to get a murder offer, things like</p> <p>19 that. But you're going to get -- the felonies</p> <p>20 might -- and most misdemeanors, I would -- yeah.</p> <p>21 Q. And do you -- is it your understanding that</p> <p>22 when those offers are conveyed by your lawyers of --</p> <p>23 that they are explaining to clients that they have not</p> <p>24 had a chance to investigate the case up to that point?</p> <p>25 A. I would hope that they're doing that, yes.</p>	<p style="text-align: right;">Page 88</p> <p>1 A. Go ahead. No. That's fine.</p> <p>2 Q. Once that initial plea offer is made by the</p> <p>3 prosecutor's office, do your lawyers tend -- tend to</p> <p>4 take steps to negotiate plea deals?</p> <p>5 A. I don't think they negotiate before having</p> <p>6 a conversation with the client, but I think</p> <p>7 negotiation some -- is, at times, done at that level,</p> <p>8 yes, or that stage.</p> <p>9 Q. So assuming they've spoken to the client,</p> <p>10 there may be some plea negotiation that happens prior</p> <p>11 to any investigation in the case?</p> <p>12 A. Yes. I think that happens a fair amount.</p> <p>13 I mean, it was one of the reasons I instituted the</p> <p>14 policy, is that I felt a lot of people were pleading</p> <p>15 people early on without any sense of -- you know, we</p> <p>16 have police officers get disciplined all the time. We</p> <p>17 have witnesses that dis -- without any sense of</p> <p>18 whether the State could actually make their case.</p> <p>19 Q. I'm going to hand you a document that I'm</p> <p>20 finally marking as Exhibit 2.</p> <p>21 (Petsch Exhibit 2 was marked for</p> <p>22 identification.)</p> <p>23 Q. Do you recognize that document?</p> <p>24 A. Yes.</p> <p>25 Q. What is it?</p>

22 (Pages 85 to 88)

1 A. Well, it's an e-mail -- it's put, again, in
2 Missouri -- or the Kansas City policies and procedures
3 database. E-mail from Leon Munday, who, at the time,
4 was my -- well, let me look at the date. Yes. At the
5 time was my assistant district defender to me, which
6 then one of us posted on the database.

7 **Q. And this is an e-mail about the United**
8 **States Superior Court decision in Missouri versus**
9 **Frye?**

10 A. That's correct.

11 **Q. And what was Mr. Munday's ultimate takeaway**
12 **regarding your office's obligations under Frye?**

13 A. I'm sorry. I'm going to -- I need to read
14 it.

15 **Q. No. Please.**

16 A. Well, he says pretty clearly that he
17 thinks, under Frye, we have the duty to communicate
18 the offers to our clients and to protect the
19 attorney-client privilege unless waived.

20 **Q. Do you recall having any further**
21 **communications with Mr. Munday about this?**

22 A. Well, it -- when Frye came out, there was a
23 lot of discussion, because the -- the prosecutor
24 started doing Frye hearings, which is having --
25 reading the offer into the record. And I -- I think

1 similar in that respect, that judges want to be sure
2 that people know what their offers are.

3 In Jackson County, we struggle a lot. The
4 judges are very, very concerned with moving cases and
5 people pleading, and the feeling that the client knows
6 their offer. And I don't think it's done out of an
7 interest that a client might miss an offer, because we
8 usually get offers back even the day of trial if we
9 want them. I think it's done out of a desire for
10 efficiency and fewer cases to move through the courts.

11 So I think in Leon's discussion of this,
12 it's -- you know, went to want to protect our clients
13 from records being made and them being encouraged to
14 speak on the record.

15 **Q. And was this information or guidance**
16 **disseminated to the -- all the attorneys on staff?**

17 A. I assume it was. In general, when we add
18 something to the policies and procedures database, we
19 send it around and say, "This has been added."

20 It's a big database, and quite honestly,
21 there's some -- there's some things that are in there
22 that are antiquated that, because I'm too busy, I
23 haven't -- I've cleaned out some things, but there are
24 other things that -- it's, you know, eighth on my list
25 of things that I'd like to update.

1 they were under the impression we weren't conveying
2 offers. I -- I -- I'm not under that impression.
3 Every -- I'm not under the impression that lawyers in
4 my office don't convey offers. But there were, you
5 know, judges who would try to then talk to your
6 client, "Do you understand that's the offer?" Or I'd
7 hear judges say, "Oh, well, your client reacted like
8 they'd never heard it," and things like that. So I
9 know for us, we didn't --

10 We have judges who try and make records all
11 the time. They want your client to ask -- you know,
12 if they're in trial, and your client doesn't testify,
13 they want your client to answer affirmatively about,
14 do they understand their rights to -- you know, the
15 right to remain silent and their right to -- that
16 they're waiving their right to testify, and sort of
17 fight this fight. The judges spend a lot of time
18 trying to make records where our client are supposed
19 to speak and respond to them, and it's awkward,
20 because if your client loses at trial, they're going
21 to be sentenced by this judge, and then they look like
22 they aren't agreeable, and they look like they're
23 negative, and the judge is really imposing on their
24 rights and really trying to litigate the
25 post-litigation stuff during their trial. And Frye is

1 But this isn't -- this is something that
2 would have been sent out to everybody and accessible.
3 Everyone has the ability to look and read this any
4 time they want.

5 **Q. Okay. And was any additional training**
6 **conducted related to this as far as you know?**

7 A. Well, I -- I do recall discussing Frye at
8 staff meetings, especially when it came out. We have
9 a weekly staff meeting where we kind of discuss what's
10 going on. And when they started doing Frye hearings
11 all the time everywhere in every case, so there was a
12 lot of discussion about Frye popping up and
13 prosecutors doing that.

14 **Q. And are Frye hearings not happening as much**
15 **now?**

16 A. I think they are. Obviously, when the law
17 came in -- you know, but they'll do a Frye hearing
18 right before trial. They'll do it -- it was happening
19 in basically every case when the law went into effect,
20 so it seemed like more because the ones that were
21 going on weren't current. I think -- I think they
22 happen. Now, obviously, if there are negotiations
23 going on, the prosecutor's is presuming you've -- I
24 don't know, that they'd have a Frye hearing, but I
25 don't -- I know they still happen.

<p style="text-align: right;">Page 93</p> <p>1 Q. Okay.</p> <p>2 A. But I can't tell you with a great</p> <p>3 frequency. It's just not brought up. And maybe it</p> <p>4 it's just not brought up because it's commonplace.</p> <p>5 Q. So in your opinion, did the attorneys in</p> <p>6 your office have the time and resources to negotiate</p> <p>7 plea deals for your clients with all of the necessary</p> <p>8 information?</p> <p>9 A. Well, I think there's a -- when people get</p> <p>10 pled early, I think there's a lot of -- there's a lot</p> <p>11 of -- you don't get video, you don't get dash cam.</p> <p>12 There's a lot of things that you just don't get. So</p> <p>13 are there plea deals that happen without all</p> <p>14 discovery? Absolutely.</p> <p>15 Q. Okay. Do you think there have been</p> <p>16 situations where a client could have gotten a better</p> <p>17 plea deal had the lawyer had the time to investigate</p> <p>18 the case first?</p> <p>19 A. Absolutely, yeah.</p> <p>20 Q. What steps do the attorneys in your office</p> <p>21 do to evaluate the immigration consequences for</p> <p>22 clients?</p> <p>23 A. So we contract with an immigration lawyer,</p> <p>24 and he's sort of a flat fee to consult, and then if</p> <p>25 he's going to do more, it's a different fee. So the</p>	<p style="text-align: right;">Page 95</p> <p>1 think -- I think there are a number of attorneys who</p> <p>2 are. I think there are some who aren't, and probably</p> <p>3 time and overload feeds into that.</p> <p>4 MS. SHIPMA: Could we go off the record for</p> <p>5 just a second?</p> <p>6 MR. WILLIAMSON: Sure.</p> <p>7 VIDEOGRAPHER: Off the record, 11:21 a.m.</p> <p>8 (A brief recess was taken.)</p> <p>9 VIDEOGRAPHER: On the record, 11:25 a.m.</p> <p>10 Q. (By Mr. Williamson) So just one last</p> <p>11 question on the -- on immigration consequences.</p> <p>12 A. Uh-huh.</p> <p>13 Q. Are you aware of any cases where, because</p> <p>14 of the attorney's inability to advise their client</p> <p>15 about the immigration consequences, that the case</p> <p>16 resulted in a -- in an adverse consequence for the</p> <p>17 client with respect to their immigration status?</p> <p>18 A. I'm not aware of a case that -- I probably</p> <p>19 wouldn't -- I mean, once the client is gone, if they</p> <p>20 get -- or they get picked up by ICE, we generally -- I</p> <p>21 wouldn't probably know, but I'm not aware of any.</p> <p>22 Q. Okay. Are retainers generally placed on</p> <p>23 your clients -- immigration retainers placed on your</p> <p>24 clients when they're in custody?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 94</p> <p>1 attorneys have to request funds in order to contract,</p> <p>2 so I -- I could look -- I mean, I have a spreadsheet.</p> <p>3 I could count that number of the times we've used that</p> <p>4 person in the last year. I don't know off the top of</p> <p>5 my head. There is a means -- and I've had that</p> <p>6 immigration attorney come to speak at one of our first</p> <p>7 Friday CLEs, mostly just sort of terrify my lawyers</p> <p>8 about if -- if you don't call him, even pleas that</p> <p>9 seem like they wouldn't effect your immigration</p> <p>10 consequences really can. It's certainly encouraged,</p> <p>11 and the resource is there.</p> <p>12 Q. Have the lawyers in your office received</p> <p>13 any additional training on immigration consequences?</p> <p>14 A. Well, aside from having the immigration</p> <p>15 attorney come and speak to us, I know there's -- there</p> <p>16 have been tracks at statewide training that talked</p> <p>17 about that. I don't know that I've specifically had a</p> <p>18 sit-down where I've said, so you have a client with --</p> <p>19 you know, who isn't is a citizen where -- how does</p> <p>20 that go, aside from having that attorney come in.</p> <p>21 Q. So do you think that, in your opinion, the</p> <p>22 attorneys in your office have the time and resources</p> <p>23 to adequately advise clients on immigration</p> <p>24 consequences?</p> <p>25 A. I would say -- I'm sort of split there. I</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Is -- is ICE ever in touch with your office</p> <p>2 for any reason?</p> <p>3 A. No. No, I -- I'm not aware of anyone who</p> <p>4 has ever talked to an ICE person.</p> <p>5 Q. Do indigent defendants in your district</p> <p>6 ever undergo psychiatric evaluations?</p> <p>7 A. Yes.</p> <p>8 Q. Does that generally happen after your</p> <p>9 office has been appointed to the case?</p> <p>10 A. Generally. I mean, there are Courts that</p> <p>11 order evaluations just based on behaviors they see the</p> <p>12 first time they see them in court. But generally, the</p> <p>13 bulk of evaluations are done when we're on the case.</p> <p>14 Q. Do you -- do you or your lawyers ever</p> <p>15 request those evaluations?</p> <p>16 A. Yes, they do. I mean, we do a number of</p> <p>17 private evaluations, and honestly, it's my preferred</p> <p>18 method. I know it's expensive and -- but, you know,</p> <p>19 clients can say a lot of things, and if it's a</p> <p>20 court-ordered mental evaluation, it's not -- there's</p> <p>21 nothing confidential about anything they're saying.</p> <p>22 So we'd had a rule for a while that we only did</p> <p>23 private mental. That has loosened up, I think</p> <p>24 because of costs. That's not my role, so I -- I can't</p> <p>25 speak to why that loosened up. So some are done.</p>

24 (Pages 93 to 96)

<p style="text-align: right;">Page 97</p> <p>1 And Jackson County also has sort of an 2 out-of-custody diversion, mental health diversion, 3 so -- and they insist if your client is going to enter 4 into that, then they have to do a court-ordered eval. 5 The State also has the option of not 6 accepting our private eval, and they can get a second 7 opinion through the Court as well. 8 So we do request some, and then we do get a 9 number of our clients also evaluated at our -- at our 10 cost. 11 Q. If -- if a psych evaluation is ordered by 12 the Court prior to your office being appointed, 13 would -- and I -- let me rephrase that. 14 In a case where you are actually appointed 15 to -- appointed to represent the person, and the 16 Court -- but the Court orders an evaluation, let's say 17 at the initial appearance -- 18 A. Uh-huh. 19 Q. -- what role, if any, would your lawyers 20 play in that process in -- in that evaluation process? 21 Would -- would your lawyer be at the file -- at the 22 competence -- competency hearing that followed the 23 evaluation? 24 A. Yes. 25 Q. Okay.</p>	<p style="text-align: right;">Page 99</p> <p>1 we have the option of sharing that or not sharing 2 that. If we want to share it or if someone comes back 3 incompetent, you know, we'd file a motion with the 4 Court to -- to have them found incompetent. 5 Q. Do attorneys in your office attend lineups 6 that include the client? 7 A. I've never known anyone who did. And 8 generally, I don't think -- generally, lineups are 9 done before we'd get the case, so I don't -- we do 10 have clients who come in as suspects who, I guess 11 there's that potential. They'll say, "The police want 12 to talk to me." In general, we tell them -- our 13 advice is not to talk to the police, so I've never 14 known anyone who has been at a lineup. 15 Q. Okay. The lineups are not videotaped, are 16 they? 17 A. I don't -- we very rarely get a live 18 lineup. There's a lot of pictures -- 19 Q. Photos? 20 A. -- and there's a lot of -- here are two 21 pictures. And there's a lot of driving by the guy as 22 he sits in the cop car and having the witness identify 23 him that way. I actually don't even remember the last 24 lineup -- I don't recall anyone ever having a live 25 lineup.</p>
<p style="text-align: right;">Page 98</p> <p>1 A. They would. 2 Q. Okay. Would they be involved in any other 3 capacity with the evaluation process? 4 A. Generally not. I mean, if we're doing a 5 private evaluation, sometimes, you know, we set that 6 up, we have a client come -- if they're out of 7 custody, come to the officer. And if we want a 8 private person to go to the jail, we have to write a 9 letter and get clearance for that person to go to the 10 jail. Most of the mental health folks don't want 11 anyone else in the room, so you're not present for the 12 evaluation. And -- and I've -- I've had lawyers try 13 and get -- even if the Court has ordered one, our 14 evaluations are so backed up in Jackson County, that 15 you could likely get a private one done. They use -- 16 they're supposed to get done in 30 days, but then they 17 almost always ask for extensions, so it usually takes 18 more like the 90 days for someone to get a mental 19 health evaluation. And sometimes they'll rush people 20 who the jail have said are -- you know, they think 21 they're actively a danger to themselves or others, 22 something along those lines, but sometimes they'll 23 intervene that way. 24 And obviously, if it's a private mental, 25 the results are only known to us, so if we want to --</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Do you -- do your lawyers ever conduct 2 Wade hearings related to these on-the-scene 3 identifications? 4 A. We don't call it a Wade hearing, but yeah, 5 I mean, they do a motion to suppress the 6 identification and -- and have a hearing along those 7 lines, so -- and that's what we would call it. I 8 assume that's along the lines of what you're -- 9 Q. Correct. 10 A. -- getting at. 11 Q. When a client -- and I apologize for 12 jumping around here. I'm trying to make sure we get 13 through everything but -- 14 A. That's fine. 15 Q. When a presentence investigation report is 16 created for -- 17 A. Uh-huh. 18 Q. -- a client, does the public defender play 19 any role in that process? 20 A. Generally, no. I mean, we've had it where 21 we've had clients insist we there. They call it a 22 sentencing assessment report. The person from 23 probation and parole who generally goes and interviews 24 a client, generally, they don't want us there. But I 25 have had attorneys who were able to be there through</p>

25 (Pages 97 to 100)

<p style="text-align: right;">Page 101</p> <p>1 that questioning process. The bulk of them, no.</p> <p>2 Q. It's your understanding though that the --</p> <p>3 the clients do not have a right to have their attorney</p> <p>4 there for these interviews?</p> <p>5 A. That's a good question. I don't -- I don't</p> <p>6 know that I've -- sadly, I don't think I've ever</p> <p>7 thought about. I -- I mean, I think that's what --</p> <p>8 when the lawyers are there for the sentencing and</p> <p>9 assessment report, I think that's what we're</p> <p>10 advocating, is that they do have a right. I don't</p> <p>11 know that -- I don't -- honestly, I don't know legally</p> <p>12 where -- where that stands.</p> <p>13 Q. Do you recall ever attending any of those</p> <p>14 interviews in any of your own cases?</p> <p>15 A. No.</p> <p>16 Q. Okay. If you have a client who pleads</p> <p>17 guilty, but then decides that they want to withdraw</p> <p>18 their plea, what steps do the attorneys -- or are the</p> <p>19 attorneys in your office directed to -- to take in</p> <p>20 that instance?</p> <p>21 A. Well, I don't know that there's a firm</p> <p>22 direction one way -- I mean, I think you meet with the</p> <p>23 client, you talk to them about it, and if -- in</p> <p>24 general, I think most attorneys try to file a motion</p> <p>25 to withdraw if -- if that's what the client wants. We</p>	<p style="text-align: right;">Page 103</p> <p>1 then appellate would resume those duties. After plea,</p> <p>2 you know, there's some -- we have the Courts right now</p> <p>3 telling us if we didn't move to withdraw after a plea,</p> <p>4 that we're on the civil probation violation, which I</p> <p>5 think is crazy, but some of the Courts are saying</p> <p>6 that. But we would say it's concluded after the plea.</p> <p>7 Now, I would say to my lawyers, if there's</p> <p>8 some natural -- you know, you have a client call --</p> <p>9 like, for example, we had a client who pled, and the</p> <p>10 judge put him on probation to accompanys, and says,</p> <p>11 we don't take that type of felony, we can't supervise</p> <p>12 him, I would say that -- you know, I would expect us</p> <p>13 to represent that person or file something for them</p> <p>14 because I think that's a continuation of the</p> <p>15 representation of the plea. And so there's some -- a</p> <p>16 little maybe wiggle room in there. But for the most</p> <p>17 part, after the plea is concluded, we're done.</p> <p>18 Q. And you mentioned that your office would</p> <p>19 file -- or the lawyer from your office would file the</p> <p>20 notice of appeal; correct?</p> <p>21 A. Yes.</p> <p>22 Q. So does that mean that that lawyer is</p> <p>23 responsible for communicating to the defendant that</p> <p>24 they have a right to appeal the decision?</p> <p>25 A. Yes. And we pretty routinely file it. And</p>
<p style="text-align: right;">Page 102</p> <p>1 have a lot of Courts who don't grant it, so --</p> <p>2 Q. All right. When your cases do go to trial,</p> <p>3 is it your understanding that your lawyers will always</p> <p>4 engage in voir dire?</p> <p>5 A. Yes.</p> <p>6 Q. Are you aware of any situations in which</p> <p>7 they have not?</p> <p>8 A. No.</p> <p>9 Q. Okay.</p> <p>10 A. I mean, I'm aware of situations where it</p> <p>11 wasn't the most -- the best or most effective voir</p> <p>12 dire, but I've never known an attorney to not ask any</p> <p>13 questions -- and I assume you're saying ask any</p> <p>14 questions during voir dire?</p> <p>15 Q. Correct.</p> <p>16 So at what point does representation by the</p> <p>17 trial office end officially?</p> <p>18 A. Well, that, of course, depends on who you</p> <p>19 ask. So as far as after a trial, if you win, you win.</p> <p>20 If you -- if you lose at trial, we're expected to do</p> <p>21 motion for new trial. In Jackson County, you do</p> <p>22 motion for new trial, you have sentencing, and we're</p> <p>23 expected to file the notice of appeal.</p> <p>24 Q. Okay.</p> <p>25 A. And then after notice of appeal is filed,</p>	<p style="text-align: right;">Page 104</p> <p>1 in -- what I always tell the client is that you can</p> <p>2 talk to the appellate attorney, and if you want to</p> <p>3 dismiss it, then you can always dismiss it. I can't</p> <p>4 not -- I can't unfile the -- you know, there's time</p> <p>5 lines in place for that. So I think maybe two cases,</p> <p>6 we haven't filed them, and it was because of</p> <p>7 specific -- you know, the State agreed to not -- to</p> <p>8 dismiss a case, so the client wasn't on the hook for</p> <p>9 that any more. There was -- it was for specific</p> <p>10 reasons that were discussed with the client.</p> <p>11 Otherwise, we always file it.</p> <p>12 Q. Okay.</p> <p>13 A. In adult cases. Now, juvenile cases are</p> <p>14 different.</p> <p>15 Q. Excellent segue. I was going to ask you to</p> <p>16 tell me a bit about how you handle juvenile cases. So</p> <p>17 do you have attorneys in your office who specialize in</p> <p>18 juvenile cases?</p> <p>19 A. Nope.</p> <p>20 Q. Are there trainings that are provided for</p> <p>21 staff on how to litigate a juvenile delinquency case?</p> <p>22 A. So there's statewide training. There's a</p> <p>23 juvenile statewide training every year, but I probably</p> <p>24 have one lawyer who goes to it a year. There is --</p> <p>25 I've had -- I usually have specific -- so my training</p>

<p style="text-align: right;">Page 105</p> <p>1 team leader right now is also my juvenile coordinator, 2 so he's responsible for -- you know, paperwork is sent 3 to him. He's responsible for going to juvenile court 4 and second chairing juvenile trials, things like that, 5 and he does some more informal training. 6 I've had -- I think at one of our Friday 7 CLEs, I had the juvenile coordinator, who is woman who 8 is not a juvenile coordinator anymore, give a talk on 9 handling maybe certification, things along those 10 lines. So I haven't done a lot of formal training. 11 And honestly, I think I've handed two 12 juvenile cases in my life. It's an area that I'm not 13 an expert in. We had a separate office for juvenile 14 when I -- when I was a trial attorney most of the 15 time. I don't remember what year they merged, but it 16 was not that -- it was only a couple years before I 17 became district defender, and I've never -- you know, 18 I think I had maybe two juvenile case, so I would say 19 my level of expertise in that area is very low. 20 Q. Are -- are juvenile cases assigned to your 21 office in the same way that adult cases are assigned? 22 A. Yeah. Well, they send -- yes. 23 Q. Okay. And is it your office that makes the 24 indigency determination on juveniles? 25 A. Yes.</p>	<p style="text-align: right;">Page 107</p> <p>1 guardian is an alleged victim, that -- and truth be 2 told, anyone we deny, the Court pretty much always 3 appoints us on anyway regardless of what our income 4 determination is. 5 Q. If there's a conflict in a juvenile case, 6 would it be handled in the same way that your other 7 conflicts are handled? 8 A. Well, historically, yes. Although, 9 recently, no -- or well, historically, no; recently, 10 yes. So it used to be that in juvenile court, there's 11 a lot of firms that, it's kind of their sole pro bono 12 hours or -- so they kind of staff different things in 13 juvenile court for pro bono hours for the firm, so it 14 used to be if we had a conflict, they would assign it 15 to someone at the firm. Recently though, they've 16 started telling us that they want us to assign them, 17 or we want -- they want us to conflict it. 18 Q. Do you know why that changed as occurred? 19 A. I -- that, I don't know. The first time 20 Judge Byrne did it -- or actually, the second time he 21 did it, I went and met with him, and he just said, 22 "Well, I think this is better with the public 23 defender." Although, right now, our conflict cases 24 aren't going to public defenders. They're going 25 private counsel. So I've not spoken to him. Given</p>
<p style="text-align: right;">Page 106</p> <p>1 Q. How many juvenile cases, by the way, would 2 you say your office handles in the course of a -- a 3 year -- 4 A. About 100. 5 Q. -- of that 5,000? 6 A. About 100. 7 Q. About 100. Okay. 8 A. A pretty low, because I know when -- there 9 was a discussion, should we specialize or not? And 10 given what our caseloads are, I -- I didn't have -- I 11 remember looking at it and saying, I can't justify 12 putting two people solely in juvenile because their 13 caseloads would be so much lower than everyone else's, 14 and one person would never have coverage. It would be 15 a mess. So that number, I do know, because I -- I 16 sort of debated, how do I deal with juvenile. 17 Q. And when you make a -- an indigency 18 determination for a juvenile, what's the basis for 19 that determination? In other words, are you looking 20 at parent/guardian income? What things are you 21 factoring in? 22 A. Yes. 23 Q. Okay. 24 A. That is -- I mean, we have a sheet on it; 25 although, there is -- you know, if the parent or</p>	<p style="text-align: right;">Page 108</p> <p>1 the climate of all the appointments right now, it's -- 2 the judiciary is fairly hostile, so I don't -- I don't 3 know that having a conversation with him would matter. 4 Although, he may be saying now, "I want the public 5 defender to absorb the cost of conflicts in juvenile." 6 Q. Okay. Do you have a sense of what 7 attorneys do -- what kind of work attorneys tend to do 8 to prepare for certification proceedings? 9 A. I -- I mean, I get a sense that they'll 10 look into some background information, arguments along 11 those lines. When had we had a separate juvenile 12 office, they had a social worker, one that was a 13 much -- you know, the ratio was better, and they had a 14 social worker who could prepare reports for the Court. 15 I think I've had maybe one lawyer do that on a 16 certification; hire someone to write a report. We do 17 have hearings, and you know, they follow the law, and 18 they -- they point out why, you know, a certain client 19 shouldn't be certified, but they don't do the legwork 20 that we used to do when there was a separate juvenile 21 office. 22 Q. And how long ago was that, that the 23 juvenile office closed? 24 A. I feel like it was '09, '10. I mean, it -- 25 it's -- it was certainly -- I became district defender</p>

27 (Pages 105 to 108)

<p style="text-align: right;">Page 109</p> <p>1 in '11, and it's certainly been closed for some years. 2 I don't remember. 3 Q. And I'm -- I'm sorry. Do you have a sense 4 of why that decision was made? 5 A. My understanding was all money. 6 Q. Okay. I know you said you -- you've only 7 handled a couple of juvenile cases in your career. Do 8 you -- in your opinion, is representing a juvenile in 9 a delinquency case a -- does it require specialized 10 knowledge in -- in juvenile court? 11 A. Yes. I would -- I think ideally. I know 12 in the cases I got, I found extremely frustrating. I 13 didn't know the language. I didn't know -- I didn't 14 know the outcomes, I didn't know available outcomes, I 15 didn't know alternatives. I found it extremely 16 frustrating, and I felt very inept. 17 Q. Have you had any complaints from any of 18 your lawyers on your staff now about difficulty 19 representing clients in juvenile court? 20 A. I've had complaints. Largely, they've 21 circulated -- you know, a juvenile trial is a bench 22 trial, and it moves in about six weeks, so most of the 23 complaints come with, I have to take these cases, it 24 interrupts my schedule that I already have, I -- you 25 know, I -- I haven't had anyone talk about the feeling</p>	<p style="text-align: right;">Page 111</p> <p>1 Q. Are there separate -- or I guess specific 2 diversion options available for juveniles? 3 A. Yes. 4 Q. And are there proceedings that occur where 5 a judge is trying to determine whether those 6 alternatives are available, or does -- or appropriate, 7 or does that happen outside of the -- the courtroom? 8 A. I think generally, they put them into 9 diversion before. Generally, our clients -- 10 occasionally, we get a juvenile put into diversion, 11 but for the most part, I think they try and earmark 12 and select those folks before they were involved, is 13 my understanding. 14 Q. And once a juvenile is in a diversion 15 program, are they still being represented at that 16 point? 17 A. No. 18 Q. So when they -- when a juvenile in a 19 diversion program goes before the Court for a review, 20 would one of your lawyers be present for that hearing? 21 A. No. I don't know the -- the diversion at 22 juvenile court is fairly new, and actually, when they 23 were forming it, it was when Judge Delmuro was there, 24 so it was probably five or six years ago, and she 25 actually asked the public defender to be involved, and</p>
<p style="text-align: right;">Page 110</p> <p>1 of lack of resources that I did; although, they 2 probably aren't aware. I mean, I saw that they had 3 resources, and then I saw that I was -- I didn't. So 4 some of it is just a lack of awareness of -- sometimes 5 you don't know what you don't know. 6 Q. In your experience or based on your 7 observations, how do attorneys in your office prepare 8 for detention hearings? 9 A. Well, usually, they don't get a list of 10 who's on the detention hearing until the day before, 11 and then I think they try -- you know, I think they 12 meet with the clients the same day. Sometimes the day 13 they get the -- the list of who's on it and who's our 14 client, and then they make what arguments they can 15 make. There's -- I don't -- there's not a lot of 16 prep. I don't think witnesses are called, generally. 17 Q. And without the services of a social 18 worker, what -- what resources are available to the 19 attorneys to identify alternatives to detention for 20 their clients? 21 A. Almost none. Their own legwork. 22 Q. Are you aware of how often the attorneys in 23 your office file review -- or detention review 24 motions? 25 A. I don't know anyone who ever has.</p>	<p style="text-align: right;">Page 112</p> <p>1 I didn't have resources to devote to doing that. So I 2 don't know if they have somebody from a firm that 3 helps run that. I -- I'm inclined to think they do, 4 and whether the people -- the pro bono people from the 5 firms represent the clients, that, I don't know. 6 Q. Okay. We talked generally earlier about 7 the use of expert witnesses. 8 A. Uh-huh. 9 Q. How frequently would you say the attorneys 10 in your office work with experts in juvenile cases? 11 A. Not very often. I mean, we've -- we've 12 hired specific experts for mental evaluations on some 13 of our juvenile clients, and I feel like I had at 14 least one attorney hire someone for -- for 15 certification. But aside from that, not very often. 16 Like, I don't think we've ever had an eyewitness ID 17 expert or something like that. 18 Q. Okay. Or even an expert on what it means 19 to be a juvenile? 20 A. Well, I do -- in the certification, I do 21 think she hired someone who talked about adolescent 22 brain development -- 23 Q. Right. 24 A. -- and that sort of the thing, but I -- I 25 think that's happened -- well, maybe it's happened</p>

<p style="text-align: right;">Page 113</p> <p>1 twice, but I can only think of one time.</p> <p>2 Q. Okay. Generally speaking, in your opinion,</p> <p>3 can the attorneys in your office adequately represent</p> <p>4 all of the clients on their docket?</p> <p>5 A. No.</p> <p>6 Q. And what is the basis for your opinion?</p> <p>7 A. Well, my own personal experience, my</p> <p>8 observation -- observation of my lawyers, when I talk</p> <p>9 to them about cases, when I've second chaired them in</p> <p>10 trial, when I've talked to their supervisors, as well</p> <p>11 as just the sheer number. It's -- there aren't enough</p> <p>12 hours in the day.</p> <p>13 Q. And that's true no matter how experienced</p> <p>14 the lawyer may be?</p> <p>15 A. Correct.</p> <p>16 Q. All right. So you talked earlier about a</p> <p>17 lawyer in your office being disciplined?</p> <p>18 A. Well, a lawyer in the appellate office.</p> <p>19 Q. Appellate?</p> <p>20 A. So not a Kansas City lawyer, yes.</p> <p>21 Q. And -- and this is Mr. Hinkebein?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So -- well, first, can you just say</p> <p>24 a word about your understanding of the -- the decision</p> <p>25 in the Hinkebein case?</p>	<p style="text-align: right;">Page 115</p> <p>1 A. No one really tried. I mean, it -- you</p> <p>2 were conditioned to such that this is what it is, so</p> <p>3 no one ever -- I certainly had plenty of lawyers</p> <p>4 telling me --</p> <p>5 Q. Take your time.</p> <p>6 A. Telling me they were overwhelmed. But I</p> <p>7 don't think -- those of us who've done it a while, I</p> <p>8 mean, you're always overwhelmed, so I don't think</p> <p>9 anyone ever put it in context of, I'm ethically</p> <p>10 putting myself in jeopardy, I'm putting my clients in</p> <p>11 jeopardy. But I -- I mean, I probably can't count the</p> <p>12 number of people who have cried in my office. I've</p> <p>13 had people threaten self-harm. I've had people need</p> <p>14 to leave immediately to take mental health breaks.</p> <p>15 It's -- it's a horrible thing to watch.</p> <p>16 Q. Did anyone in your office just resign as a</p> <p>17 result of this?</p> <p>18 A. Has anyone resigned as a result of</p> <p>19 Hinkebein?</p> <p>20 Q. As far as you know?</p> <p>21 A. No. Not yet. No one has resigned as of</p> <p>22 yet, but I -- I mean, within days of the decision, I</p> <p>23 got multiple e-mails saying they weren't going to</p> <p>24 take -- that they ethically -- you know, they're --</p> <p>25 they're saying, "Well, Judge Fisher says, tell your</p>
<p style="text-align: right;">Page 114</p> <p>1 A. Well, I know that his -- his ethical</p> <p>2 violations generally fell under Rule 4, the</p> <p>3 communication diligence. My understanding from</p> <p>4 reading the decision was, you know, that he missed</p> <p>5 deadlines, that he was not communicating with his</p> <p>6 clients in a timely manner, so diligence, competence,</p> <p>7 communication, things along those lines. And my</p> <p>8 understanding is -- I mean, every -- everyone -- every</p> <p>9 public defender in Missouri, I'm fairly certain, has</p> <p>10 either red or listened to the comments made by</p> <p>11 Judge Fisher saying that, you know, why didn't -- one</p> <p>12 of the things he said is, I mean, I understand he had</p> <p>13 health problems. I don't know anything about his</p> <p>14 health problems. But that he also said, I have this</p> <p>15 big caseload, and it's tough to stay on top of</p> <p>16 everything, and you know, he said, tell your</p> <p>17 supervisor you can't take any more cases or quit. I</p> <p>18 mean, the bottom line, you know, that's what -- what</p> <p>19 my lawyers repeat is, you know, tell your supervisors</p> <p>20 you can't take more cases or quit. Or be open to</p> <p>21 having your law license compromised.</p> <p>22 Q. So I'm going to ask you a little bit more</p> <p>23 about that. But -- so prior to the Hinkebein</p> <p>24 decision, were attorneys in your office permitted to</p> <p>25 refuse cases if they thought it was appropriate?</p>	<p style="text-align: right;">Page 116</p> <p>1 supervisor, no, and I'm -- I'm going to tell you no."</p> <p>2 And ultimately, every lawyer got there.</p> <p>3 Q. Do you have a sense of what the reaction</p> <p>4 was of -- from the local Bar outside of the public</p> <p>5 defender's office?</p> <p>6 A. I don't. I don't have much of a reaction.</p> <p>7 I mean, I think -- I -- it's hard -- you know, we</p> <p>8 bring up caseload, we don't bring up caseload,</p> <p>9 everybody is sort of like, public defender is</p> <p>10 overworked, yeah, yeah, yeah. I don't think -- but it</p> <p>11 sort of dies down after a while, and I -- I don't know</p> <p>12 if people assume it got better or things resolved.</p> <p>13 But the -- I've -- I worked there 20 years in January,</p> <p>14 and the caseload has always been its own sort of crazy</p> <p>15 pressure, and it's always been relentless, and it's</p> <p>16 always -- it's always been one of those things that</p> <p>17 when people leave, sometimes it's this or that, but</p> <p>18 they -- you know, often when they're out, they talk</p> <p>19 about how it's so nice. I don't feel like I have to</p> <p>20 be 100 places. I don't feel like I dropped a bunch of</p> <p>21 balls, and just a weird -- you know, like, their own</p> <p>22 version of post-traumatic stress.</p> <p>23 Q. How did the central office respond to -- to</p> <p>24 this -- to the decision?</p> <p>25 A. I mean, I think they made everyone aware of</p>

<p style="text-align: right;">Page 117</p> <p>1 it because -- and I know Michael sent out a memo, just 2 talking -- I mean, I think -- well, I mean, I think, 3 one, people were upset that one of their own was 4 facing a lifetime suspension. That's frustrating. 5 And it appeared that the Courts were fairly 6 indifferent. You know, like, knowing budget-wise how 7 much we struggled, and the -- I guess we all assume 8 the Courts know how much we struggled that, you know, 9 we didn't get funding or we did, and the governor 10 withheld it, and that a lot of those issues weren't of 11 our own doing or choosing. It wasn't for want of 12 asking or wanting. 13 I don't know if I answered your question. 14 I'm sorry. 15 Q. No. That's helpful. 16 Would you say that the -- well, did -- did 17 the central office provide any specific guidance about 18 how to move forward as -- you know, either as 19 individual attorneys or as district offices to handle 20 this? 21 A. Well, they certainly said you -- I don't 22 think there he was a specific, you should do this; you 23 should file this. As we requested things, you know, 24 we certainly -- we said that -- they said that we'd be 25 supported -- supported and that, you know, if we</p>	<p style="text-align: right;">Page 119</p> <p>1 of dicta, and you are either overreacting or you're 2 pulling a stunt. They are condescending. And my 3 lawyers will go to court, and they'll say things like, 4 "Oh, are you going to work today?" Or "Oh, how are 5 you feeling?" It's been largely -- it's been very 6 disappointing. I would say that, that we really -- 7 you know, you practice in front of these judges for a 8 long time, and they tell you what a good job you're 9 doing, and they are -- there's a sense that you have a 10 camaraderie with you, and it's been no -- my 11 understanding -- like, I talked to someone with 12 Missouri Lawyers Weekly, and you know, report it. 13 She'll go to the court and bank meetings, and they've 14 joked about how we're the black knight, and they've 15 cut her arms and legs off and -- 16 Q. Now, you mentioned that you have been in 17 touch with the Court -- 18 A. Uh-huh. 19 Q. -- in your district. Are you aware of 20 other district officers communicating with the Courts 21 in their districts? 22 A. Yes. 23 Q. Have you been in communications with other 24 district offices about how to respond to this? 25 A. Yes. Well, shortly after Hinkebein came</p>
<p style="text-align: right;">Page 118</p> <p>1 wanted to make assertions based on our attorneys -- I. 2 Mean, honestly, I didn't have a choice. My 3 lawyers were -- were very -- and understandably so. 4 Very adamant that they weren't taking -- I mean, I 5 have people -- you know, they said, if you assign me a 6 case, I'm filing a Bar complaint against you. 7 There -- it wasn't -- for me, there wasn't wiggle 8 room. My attorneys were like, no, I'm not -- I'm not 9 doing that, and I don't think you can make me. So I 10 know for me, when I asserted my office being at a 11 point where we couldn't ethically take more cases, 12 it's because I met with every single lawyer, and they 13 had all been very clear that they were there. Some 14 more adamant than others, but a number of them just -- 15 we don't have to do this. You know, the -- the 16 Supreme Court says I have the same ethical duties as 17 any other lawyer, and I should not have to have this 18 caseload. 19 Q. We'll talk shortly about the specific steps 20 that your office took. But in your experience, 21 what -- what has been the response from -- from the 22 Courts, generally, in -- in your district? 23 A. They -- they don't believe it's real. 24 They -- I mean, I've had to -- e-mail exchange with 25 Judge Torrence where he's basically said it's a bunch</p>	<p style="text-align: right;">Page 120</p> <p>1 out, we had our yearly management conference, so there 2 were a lot of district defenders there, and it was a 3 large part of the discussion about how people were 4 dealing with it. And a multiple -- I mean, asserting 5 this and staying on top of it is a full-time job on 6 top of your full-time job, so -- and we've -- we've 7 made efforts to get caseload relief before through the 8 years, and it -- I mean, it's -- it's exhausting. It 9 it's -- you have all this animosity. You work a ton 10 of hours to litigate all this stuff on top of all the 11 work you're supposed to be doing. So I'm somewhat 12 understanding of district defenders who are like, oh, 13 yeah, my attorneys have 300 case, but they think 14 that's fine. And in my head, I'm like, that's insane. 15 My attorneys have 100 cases, and I think that's 16 insane. So there's -- there is a sort of a wide 17 variety of responses. So I have talked to other 18 district defenders, and I've -- I've talked with -- 19 well, Anthony in Liberty. I've talked with Jeff 20 Martin in Harrisonville. 21 Justin Carver, because Justin Carver is the 22 only one has had a Chapter 600 hearing; mostly to say, 23 like, "How did your hearing go? What did it entail?" 24 Oh, just questions about, "What evidence did you put 25 on?" Because all of the Chapter 600 hearings under</p>

30 (Pages 117 to 120)

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Case 2:17-cv-04057-NKL Document 153-12 Filed 02/09/18 Page 31 of 93

<p style="text-align: right;">Page 121</p> <p>1 Chapter 600.063 had never done -- been done before, so 2 it was sort of uncharted territories. And my -- my 3 judges aren't interested in arguments under Rule 4. 4 They really want everything to be litigated -- well, 5 they say they want everything to be litigated under 6 Chapter 600.063. I've filed two motions, both of 7 which have been denied, so how serious they are about 8 that -- and I can tell you, Jeff City filed the exact 9 same motion. I filed mine first, he filed his. 10 His -- his judge granted part and denied part, and had 11 a hearing. My judge denied it. 12 Q. Now, the Chapter 600 -- let me back up. 13 You -- you're aware of the Missouri Supreme 14 Court's decision in Waters; correct? 15 A. Correct. 16 Q. And you were employed with the MSPD at that 17 time? 18 A. Yes. 19 Q. So that -- you were district defender at 20 the time? 21 A. I think it was 2012. Is that -- yeah. I 22 was the district defender at the time. 23 Q. Was it your -- what was your understanding 24 of that decision when it came out as it relates to 25 what we're talking about right now and what your</p>	<p style="text-align: right;">Page 123</p> <p>1 for just one minute? 2 VIDEOGRAPHER: Off the record, 12:08 p.m. 3 (A brief recess was taken.) 4 VIDEOGRAPHER: On the record, 12:08 p.m. 5 (Petsch Exhibit 3 was marked for 6 identification.) 7 Q. (By Mr. Williamson) I'm going to hand you 8 a document I'm marking Exhibit 3 for identification. 9 Do you recognize that letter? 10 A. I don't. 11 Q. Can you take a -- a moment and just review 12 it for me? 13 Who is the author of that letter? 14 A. It looks like Bethany Turner. 15 Q. Do you know Ms. Turner? 16 A. I mean, I know of her, but I don't know 17 her. 18 Q. Okay. And do you, having reviewed the -- 19 the letter, do you agree with the sentiments in the 20 letter? 21 A. Yes. 22 Q. And are you aware of whether similar 23 letters have been sent by other district defenders to 24 the judges in their districts? 25 A. I'm aware a number have, yes. It's similar</p>
<p style="text-align: right;">Page 122</p> <p>1 options were as -- as district defender in refusing 2 cases? 3 A. I don't -- back in 2012, we weren't -- one, 4 we were at a very low cycle for filings. So we 5 actually -- our office wasn't refusing cases at the 6 time because we weren't numbers-wise there, or we 7 didn't feel we were numbers-wise there. So I -- I was 8 less involved in how Waters went just because my 9 office wasn't -- hadn't been certified. A number of 10 things -- you know, under -- back then, there were 11 certifying offices, and you had to be a percentage 12 overloaded on a certain scale, so -- and we would be 13 over two months and under a month, and you had to be 14 there for three consecutive months, so while that was 15 going on, we hadn't met that. But there was clearly a 16 backing off of talking about caseload and talking 17 about the ethics of caseload, or that's what it felt 18 like. 19 Q. A backing off, meaning -- 20 A. Well, we were no longer going through -- we 21 weren't certifying offices. I mean, my understanding 22 was that the 063 was created sort of as a response to 23 offices being certified and efforts to stop that, and 24 it seemed to effectively do that. 25 MR. WILLIAMSON: Can we go off the record</p>	<p style="text-align: right;">Page 124</p> <p>1 to the Boone County letter, which I had read before, 2 so yes, I'm aware that other letters have been sent 3 that are similar. 4 (Petsch Exhibit 4 was marked for 5 identification.) 6 Q. I'm going to hand you what's been marked as 7 Exhibit 4 for identification. Do you recognize that? 8 A. No. I don't believe I've seen the letter, 9 this particular letter. 10 Q. Is it similar to the letter that you were 11 just reviewing? 12 A. Yes. 13 Q. Who is the author of this letter? 14 A. Pamela Musgrave. 15 Q. Okay. And Ms. Musgrave is a district 16 defender in Area 39? 17 A. Yes. 18 Q. And do you agree with the sentiments in 19 this letter as well? 20 A. Yes. I mean, obviously, I don't work in 21 Area 39, so I can't is specifically talk to -- but I 22 don't know a single office that doesn't have Rule 4 23 issues, so -- 24 (Petsch Exhibit 5 was marked for 25 identification.)</p>

31 (Pages 121 to 124)

<p style="text-align: right;">Page 125</p> <p>1 Q. I'm handing you what's been marked 2 Exhibit 5 for identification. What is that document? 3 A. It is -- it looks like a template for 4 suggestions in support of writ of prohibition and/or 5 mandamus. 6 Q. Who created this document, as far as you 7 know? 8 A. I'm assuming Greg Mermelstein did, but I 9 don't know for sure. 10 Q. And why do you assume that Greg Mermelstein 11 created it? 12 A. It just looks like Greg's writing, and he 13 has a number of motions. I think this one -- that are 14 available for other lawyers to look at on the website. 15 Q. And was that -- as far as you know, was 16 that template placed on -- is it -- is it in a 17 database for MSPD? 18 A. Right. We sort of have a -- a resources -- 19 we have a lot of databases, but one of them is a 20 resources one. 21 Q. And so any lawyer in the system could go in 22 and access this template? 23 A. Yes. 24 Q. Okay. And do you think that's a -- it is 25 a -- has been a helpful resource for lawyers at the</p>	<p style="text-align: right;">Page 127</p> <p>1 it? 2 A. I don't think we've gotten to it -- I think 3 we probably took five cases off it in order. Now, a 4 lot of -- almost everyone that we're being appointed 5 on is also on that list, so people are coming off the 6 list; they're just not coming in any certain order. 7 It is not first come, first served any more. It's 8 just however the Courts are appointing us. 9 Q. And do you know how many people are on the 10 waiting list right now. 11 A. Not exactly, because people are added every 12 day. 13 Q. Sure. 14 A. But the last time I looked, which was last 15 Thursday, I want to say it was about 250 people. 16 Q. And -- and this was -- when was the -- the 17 list first set up? 18 A. October 16. 19 Q. October 16. Okay. Do you have a sense of 20 that roughly 250, how many of those people are in 21 custody? 22 A. No. 23 Q. You don't have a sense, or none of them 24 are? 25 A. Some of them are. I don't have a -- I</p>
<p style="text-align: right;">Page 126</p> <p>1 public defender's office? 2 A. The database? 3 Q. The database. 4 A. Yes. 5 Q. Has your office created a waiting list for 6 defendants who -- whose cases can't be covered by your 7 lawyers? 8 A. I call it a postponement list, but yes. 9 Q. Okay. And -- and how does the postponement 10 list work? 11 A. We screen people, and then we enter them 12 into a -- we have a client database. It's marked in 13 such a way that we can tell who screened what day. 14 And then as attorneys have come to us to say, "I can 15 take more cases," we take whoever is next on the list. 16 Well, historically. Now, we're being appointed, so we 17 aren't even getting to the list because we have so 18 many appointments coming in, but that was -- that's 19 how we started out, and we did -- I think it took 20 seven days to remove the first person off of the 21 postponement list. 22 Q. So as of right now, does the postponement 23 list still exist? 24 A. Yes. 25 Q. It's just that it's taking longer to get to</p>	<p style="text-align: right;">Page 128</p> <p>1 don't know what percentage are in custody of -- 2 because we take applications in custody, and because 3 the law says that we can't -- we have -- we can't -- 4 we can't only accept or reject or promote classes of 5 people. So they're on the list, we're taking it as 6 they come. 7 Q. And people are coming off the list in 8 order? 9 A. Yes. Ideally, they were, yes. 10 Q. So it is -- as far as the Court is 11 concerned, it is of no moment whether the person is in 12 custody or not when determining who's next to come off 13 of the waiting list? 14 A. Well, they don't -- one, I don't think they 15 even acknowledge my list as anything valid or real or 16 legal, so -- and they're just appointing who they want 17 to appoint, so -- without any regard to what the list 18 is or anything about it. 19 Q. And from -- from your perspective in 20 putting the list together or maintaining the list, how 21 do you account for if -- if you can at all, the fact 22 that some of -- some of the people on the list -- are 23 on the waiting list, are they prioritized in any way? 24 A. No. 25 Q. No?</p>

32 (Pages 125 to 128)

<p style="text-align: right;">Page 129</p> <p>1 And are you -- are you personally sort of 2 administering this list, or is there someone else in 3 your office that's doing that? 4 A. Joseph Megerman is -- is the list person, 5 yes. 6 Q. Okay. 7 A. Well, I mean, we have -- we have a way in 8 the database that's market so that we can see how the 9 list is kept, and then Joseph also has a spreadsheet 10 that he's maintaining of the appointments and as 11 people come off the list. But when people -- when we 12 had the ability to remove people from the list, we 13 didn't have so many appointments coming in, he would 14 look at the list, and then assign the cases. 15 Q. At this stage, are the Courts in your 16 district appointing private attorneys at all to 17 represent -- 18 A. Not at all. We had one judge who was, and 19 then she was told that she could not do that any more. 20 Q. Okay. You're familiar with -- well -- 21 (Petsch Exhibit 6 was marked for 22 identification.) 23 Q. I'm handing you what's been marked 24 Exhibit 6 for identification. Do you recognize that? 25 A. Yes.</p>	<p style="text-align: right;">Page 131</p> <p>1 A. I don't know that -- well, I think they've 2 taken some appeals from central. I don't know that 3 any other office has sent cases to the firms aside 4 from mine. 5 Q. Okay. So -- 6 A. I'm not aware of that. 7 Q. So is it your sense that the program is 8 really focused on the -- the bigger offices around the 9 state? 10 A. I -- I -- I think the -- the program is 11 fo -- focused on where -- the firms -- the firms who 12 have agreed to participate are at, and it appears that 13 it is in the -- in the cities, so I think the thought 14 is, we don't want to have these firm lawyers who are 15 taking cases for free to drive to Chillicothe, but I 16 don't have a firm grasp. All I know is when they ask 17 me for cases, I provide them cases. 18 Q. And what -- what kinds of cases are being 19 assigned to those firms? 20 A. A variety. Everything from possession to 21 murder. 22 Q. And this program has been operating for how 23 long? 24 A. I think the first cases I sent out were in 25 May. I think there was a training either in April or</p>
<p style="text-align: right;">Page 130</p> <p>1 Q. What is it? 2 A. This is an e-mail and documents pertaining 3 to assignment of cases through the Missouri Coalition 4 for the Right to Counsel. 5 Q. And can you -- you're familiar with the -- 6 we'll call it the MCRC? 7 A. Yes. 8 Q. Can you describe what the MCRC is? 9 A. And again, I didn't found -- I -- I'm a cog 10 in -- in the system, but my understanding is it's a 11 nonprofit that's set up to get cases to firms who want 12 to try them. I know I've -- for my part, I've helped 13 get cases to firms. I've participated in two 14 trainings of attorneys from the firms who are -- 15 who -- the firms were taking cases, and those 16 attorneys specifically were taking cases. 17 Q. Do you know how many firms are involved? 18 A. I don't. On the Saint Louis side, I have 19 no idea. 20 Q. Okay. 21 A. I think on the Kansas City side, I feel 22 like the number of firms that have taken cases from us 23 is probably around a dozen. 24 Q. And the Kansas City area doesn't only 25 include district -- or Area 16; correct?</p>	<p style="text-align: right;">Page 132</p> <p>1 May of this year. 2 Q. And since the program began, approximately 3 how many of your cases have been reassigned to MCRC 4 attorneys? 5 A. I would say between -- between 15 and 20. 6 I have a couple out right now that are doing conflict 7 checks. So not -- not a huge number. 8 Q. Is your office involved at all in 9 monitoring that representation? 10 A. It depends what you -- I -- I don't know 11 that I'd use the word "monitor." I -- I regularly -- 12 I'm a resource for the lawyers. I mean, I have talked 13 to three of them in the last three days, so they 14 regularly call with questions, they want to talk about 15 plea offers, they want to talk about, this is what we 16 do in civil; is there something equivalent in -- in 17 criminal? So some of them communicate more. There's 18 not a requirement, I would say, about how much 19 communication is happening or how much oversight the 20 firms are engaging representation, and I -- I consider 21 myself more as a resource than a monitor, if that 22 makes sense. 23 Q. And the -- and the firm is making the 24 decision about which individual lawyers are taking 25 these cases; correct?</p>

<p style="text-align: right;">Page 133</p> <p>1 A. Yes. But I -- I think we've asked that all 2 the lawyers go to our trainings, so we're meeting and 3 talk -- you know, talking to the lawyers. But yes, 4 the firm -- I mean, I think most of the lawyers are at 5 the mercy of what their firm will or won't let them 6 do --</p> <p>7 Q. Right. 8 A. -- since they're using the firm's resources 9 and working for free.</p> <p>10 Q. And aside from the outreach that they may 11 do to you for answers to you for answers to particular 12 questions, the -- the supervision of those attorneys 13 is being done by the firms? 14 A. Yes.</p> <p>15 Q. And so a total of 15 or 20 cases since May; 16 right? 17 A. Yes.</p> <p>18 Q. So has the -- has the -- the MCRC program 19 relieved your district's caseload in any significant 20 way? 21 A. No.</p> <p>22 Q. Okay. 23 A. And I'll tell you, when I assign cases, I 24 usually -- I've done it with people who are leaving, 25 so I was giving them clients that were already going</p>	<p style="text-align: right;">Page 135</p> <p>1 brought up the case that says he can't appoint her 2 personally, and then he set it for Thursday and sent 3 an order over basically appointing and saying someone 4 must show or something along those lines, and I 5 handled that case. I went to court that day, so that 6 would have been the 18th, I believe.</p> <p>7 Q. And -- and you went before the Court? 8 A. Yes.</p> <p>9 Q. And what happened at that hearing? 10 A. Well, I tried to make a record. I have 11 filed a motion. A number of my lawyers were there to 12 testify about their -- their conflicts under Rule 4. 13 I was not allowed to make a record. I was personally 14 appointed. It was -- it was talked over a fair 15 amount, and -- and then we set it over so I could writ 16 the judge.</p> <p>17 Now, at the same time, a district defender 18 had filed work. Leslie Hazel had filed a case that -- 19 a writ that had gone up through I believe the southern 20 district and the Missouri Supreme Court and was denied 21 under the Rule 4, and there's basic instruction on the 22 order saying that we need to file an individual case 23 that's under Chapter -- Chapter 600.036. So our writ 24 didn't encompass that level because we figured Courts 25 would rule on that. It was on that personal</p>
<p style="text-align: right;">Page 134</p> <p>1 to have a change in attorney anyway because the -- the 2 attorneys were leaving for one reason or another, 3 so -- and it -- most of the firms are wanting trial 4 experience, so it's easier to tell when someone is 5 exiting, when a case a little further along, how 6 they -- but that -- that's been my selection process. 7 So attorneys have enjoyed the fact that they haven't 8 had to absorb those cases that are set for trial 9 fairly soon and would sort of wreak havoc in their 10 schedule, but as far as -- their caseloads aren't 11 significantly lower or anything like that.</p> <p>12 Q. Okay. Okay. Almost done. 13 I -- you talked quite eloquently about, you 14 know, your and your attorneys' response to the 15 Hinkebein decision, generally. I wanted to talk a 16 little bit about the -- the sort of formal steps you 17 took in the wake of that decision.</p> <p>18 At what point did you first take action in 19 court to -- to try to deal with the situation? 20 A. Well, I wrote the letter, I believe, 21 October 13, to Judge Torrence. That following Monday, 22 the 15th, you know, we had an attorney who the judge 23 wanted to appoint a probation violation and have her 24 handle it right there, and she asserted her ethics 25 under Rule 4. He tried to appoint her personally, she</p>	<p style="text-align: right;">Page 136</p> <p>1 appointment, which that western district denied. 2 (Petsch Exhibit 7 was marked for 3 identification.)</p> <p>4 Q. So I'm going to hand you what I've marked 5 as Exhibit 7. Is that the writ that you're referring 6 to? 7 A. Yes.</p> <p>8 Q. And you're saying that this was filed -- 9 was it filed before the Hazel decision? 10 A. (Nonverbal response.)</p> <p>11 Q. It was filed after? 12 A. Correct.</p> <p>13 Q. And what was the response to your petition? 14 A. So this writ was denied, and then I'd 15 already entered under objection, so the case was set 16 the following Thursday. The writ was denied in, I 17 think, an hour's time or something. Something crazy 18 fast for the Court of Appeals, and -- and I 19 represented the client on this case.</p> <p>20 Q. So do you recall what -- what you filed 21 next? Did you -- so this was the -- the Nevels case? 22 A. Uh-huh. Keith Nevels. Well, I 23 represent -- Keith Nevels was a guy who was on 24 probation in the wrong place, so he really wasn't in 25 any jeopardy. The judge just changed the -- the</p>

34 (Pages 133 to 136)

<p style="text-align: right;">Page 137</p> <p>1 company that was monitoring him, and it was continued, 2 so I didn't file anything else on Nevels. And then I 3 think -- well, November 1, I filed a -- a motion under 4 Chapter 600.063 in suggestions and support. 5 (Petsch Exhibit 8 was marked for 6 identification.) 7 Q. Handing you Exhibit 8 for identification. 8 A. Uh-huh. 9 Q. Is that the motion that you just referred 10 to? 11 A. Yes. 12 Q. Okay. 13 MR. WILLIAMSON: Do you want this, Jackie? 14 MS. SHIPMA: No. That's fine. 15 Q. (By Mr. Williamson) And what was the 16 result of that motion? 17 A. It was denied. 18 Q. What did you do after that motion was 19 denied? 20 A. I -- I think a week later, I filed a second 21 motion under Chapter 600.063. I think that was 22 November 8. 23 Q. And what -- what was the -- what was the 24 difference between that motion and the initial motion 25 you filed?</p>	<p style="text-align: right;">Page 139</p> <p>1 our ethics, we're going to try and comply with them. 2 So my office started assigning cases. 3 Fairly quickly after that, I self-reported to the Bar, 4 because I believe it's an ethics violation for me to 5 be assigning cases, and it was at my direction that my 6 deputy was doing that, and -- and then I had some 7 attorneys who were not appearing who -- who actually 8 wanted to be -- my understanding is they wanted to be 9 personally appointed. On one of their 10 non-appearances, the judge issued a show cause order 11 for me as to why I should be not be held in contempt, 12 and we had a hearing on that last -- was that last 13 Monday? I think it was last Monday. It's all 14 happening very quickly, so -- 15 Q. Have you gotten a response? 16 A. Yeah. She -- she quashed her motion. I -- 17 I got counsel, and she quashed it base -- basically 18 based on specificity, because she didn't name me, 19 personally. And since then, a majority of the judges 20 are now ordering me, personally, into almost every 21 case. 22 (Petsch Exhibit 9 was marked for 23 identification.) 24 Q. Okay. I'm handing you Exhibit 9 for 25 identification.</p>
<p style="text-align: right;">Page 138</p> <p>1 A. Well, the judge's denial on the first 2 motion was very -- I'm trying to think of a nice term 3 for it. Scathing. And it was clear he had a lot of 4 issues with my bringing Rule 4 into a Chapter 600 5 hearing, so I -- I had -- I filed a more bare bones 6 motion, which I assumed was what the Court wanted. 7 Q. Okay. And how did the Court respond to 8 that second motion? 9 A. He denied it and accused me of bad faith -- 10 or actually, he found me in bad faith. 11 Q. Okay. So -- so you sought a conference 12 with the Court on two occasions; both of those 13 requests were denied? 14 A. Correct. 15 Q. Did you take any further actions in court 16 at that point? 17 A. I -- well, the judges were appointing the 18 office on a lot of things, and it was clear from my 19 first hearing in Nevels that if I wasn't going 20 forward, he was going to set a contempt hearing. I -- 21 I've not abandoned any -- I think -- I think our 22 Rule 4 issues are legitimate and concerning. However, 23 the judge -- I also don't want myself or attorneys 24 held in contempt. I don't think that is the route. 25 Even under orders that I think are unlawful or against</p>	<p style="text-align: right;">Page 140</p> <p>1 A. Yes. 2 Q. Is that the complaint that you just 3 mentioned? 4 A. Yes. This is my self-report to the Office 5 of Chief Disciplinary Counsel. 6 Q. And you -- you indicate that you felt some 7 obligation to file this, to -- to self-report? 8 A. Yes. I'm, in fact, on a regional 9 disciplinary council. I'm a member. But I -- I think 10 by assigning cases to my lawyers, I am in violation of 11 Rule 4. I'm in violation of my supervisory duties. 12 And so if you look at what I write, I -- you can also 13 ask for guidance, so I asked the -- I asked the Office 14 of the Chief Disciplinary Counsel for guidance, 15 because I -- I am not sure what I should be doing 16 here. 17 Q. And this was filed on November 20? 18 A. Right. 19 Q. Okay. Did you -- have you received a 20 response to your -- 21 A. No. 22 Q. In your experience, how long does it 23 generally take to get a response from -- 24 A. It takes -- well, generally, I'm not the 25 person who receives it. I'm only on a committee, so</p>

35 (Pages 137 to 140)

<p style="text-align: right;">Page 141</p> <p>1 we only get sent the things that come to committee. I</p> <p>2 don't have a sense of how long that will take.</p> <p>3 Q. But this is -- this is the same office that</p> <p>4 evaluated Mr. Hinkebein's situation?</p> <p>5 A. Yes. And went for it and made arguments in</p> <p>6 front of the Supreme Court on them, yes, correct.</p> <p>7 Q. Against Mr. Hinkebein?</p> <p>8 A. Right. Against him.</p> <p>9 Q. Okay. You -- you attach the letter that</p> <p>10 you referred to earlier, the October 13, letter to</p> <p>11 Judge Torrence?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Did -- did he response by letter to this?</p> <p>14 A. Well, by e-mail.</p> <p>15 Q. By e-mail?</p> <p>16 A. He -- it was a Word document that looks</p> <p>17 like a letter.</p> <p>18 Q. Okay.</p> <p>19 A. But he responded by e-mail, and which I</p> <p>20 attached that -- that --</p> <p>21 Q. Okay. So that's the October 17 letter?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. So as of right now, you -- well,</p> <p>24 hold on. Let me back up.</p> <p>25 You also attached the transcript of a</p>	<p style="text-align: right;">Page 143</p> <p>1 most of my cases just because, when I go to court, the</p> <p>2 judges are making records with me about</p> <p>3 representation, and if it -- it feels like they are</p> <p>4 trying to set up a contempt hearing. They're not</p> <p>5 doing that to the rest of my lawyers, which is</p> <p>6 unfortunate, because I would like to be more helpful,</p> <p>7 but I don't -- I'm concerned -- and I'm concerned that</p> <p>8 all of this is affecting clients and representation as</p> <p>9 well. But I'm also concerned that I -- you know, the</p> <p>10 judges are all sending the orders to me personally, so</p> <p>11 the last time I was in court, she said, "Did you</p> <p>12 receive this order?" I sent it to you personally."</p> <p>13 It -- it feels -- quite frankly, it feels like a</p> <p>14 setup. It feels like a setup to have me held in</p> <p>15 contempt.</p> <p>16 Q. Okay. And so as of right now, you're</p> <p>17 just -- you're waiting for a response to your Bar</p> <p>18 complaint that you're self-reporting?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And continuing to accept those cases</p> <p>21 as necessary?</p> <p>22 A. Yes. I mean, I've -- I've gotten orders</p> <p>23 that are giving me five days to enter. I'm getting</p> <p>24 orders that are saying, "Ruth Petsch must enter in</p> <p>25 fives days." I'm complying with that. I am also</p>
<p style="text-align: right;">Page 142</p> <p>1 hearing where you moved to withdraw from --</p> <p>2 A. Yeah. I just really wanted -- I wanted</p> <p>3 them to see that I really -- he mentioned the</p> <p>4 contempt, and I wanted the Court to -- or I wanted</p> <p>5 OCDC to understand that my assignment is not -- is</p> <p>6 because I -- I have a good faith belief that will be</p> <p>7 held in contempt. It's only been underlined by the</p> <p>8 fact that -- I sent -- I sent this in on the 20th, the</p> <p>9 order that came out. The show cause order came out on</p> <p>10 the 21st. I had no idea that that would be coming out</p> <p>11 obviously, but I -- I wanted them to be aware that I'm</p> <p>12 not just assigning cases because I feel compelled to</p> <p>13 under penalty of going to jail.</p> <p>14 Q. So -- and so do you right now currently</p> <p>15 still represent Mr. Nevels?</p> <p>16 A. I -- I don't think so. I -- we concluded</p> <p>17 the matter. He was continued on probation. If you</p> <p>18 ask the Courts, they'll probably think I'll represent</p> <p>19 him in perpetuity. I have no idea.</p> <p>20 Q. And as far as you know, how many cases are</p> <p>21 you assigned to right now?</p> <p>22 A. My myself, personally?</p> <p>23 Q. Right.</p> <p>24 A. I probably -- open cases, I probably have</p> <p>25 about 40; although, as an office, we're reassigning</p>	<p style="text-align: right;">Page 144</p> <p>1 assigning them to lawyers because --</p> <p>2 Q. Right.</p> <p>3 A. I -- I'm complying because the Court is</p> <p>4 ordering me to do it. So -- but like I said before, I</p> <p>5 have cases where I'm entered, not because I'm really</p> <p>6 representing those clients, but because the Court is</p> <p>7 ordering me to do so, and I firmly believe they will</p> <p>8 hold me in contempt if I do not, so -- and I'm waiting</p> <p>9 to hear back from the Office of Chief Disciplinary</p> <p>10 Counsel. That's correct.</p> <p>11 Q. Are you doing -- are there any cases where,</p> <p>12 for whatever reason, you are actually having to do</p> <p>13 work on the case aside from entering your --</p> <p>14 A. Yeah. Well, I mean, I was working -- so I</p> <p>15 appeared in court last Wednesday. I had multiple</p> <p>16 probation violation clients that I represented. I</p> <p>17 have a few, and -- and I have -- for the -- the</p> <p>18 probation violation docket that I'm shifting over to</p> <p>19 another attorney, I mean, I had mental done on the</p> <p>20 guy, I've arranged -- so I'm doing some</p> <p>21 representation, sort of trying to tie it up.</p> <p>22 Q. Okay. But those are -- that's on cases</p> <p>23 that you already had --</p> <p>24 A. Right.</p> <p>25 Q. -- on your docket?</p>

36 (Pages 141 to 144)

<p style="text-align: right;">Page 145</p> <p>1 A. Right. I'm not -- I'm not going to</p> <p>2 undertake -- aside from entering --</p> <p>3 Q. Right.</p> <p>4 A. -- I've not really been representing any of</p> <p>5 those folks. I'm just complying with the Court's</p> <p>6 orders.</p> <p>7 Q. And -- and you're being appointed to all</p> <p>8 manner of cases; right? Not just probation?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Is there anything else that you</p> <p>11 think we should know regarding your ability or your</p> <p>12 office's ability to provide representation to your</p> <p>13 clients?</p> <p>14 A. Not that I can think of, no.</p> <p>15 MR. WILLIAMSON: I know we've covered a lot</p> <p>16 of ground. All right. I think that's all I have.</p> <p>17 Thank you.</p> <p>18 MR. RAMSEY: Can we go off the record for</p> <p>19 just a minute?</p> <p>20 VIDEOGRAPHER: Off the record, 12:42 p.m.</p> <p>21 (Off the record.)</p> <p>22 VIDEOGRAPHER: On the record, 12:42 p.m.</p> <p>23 EXAMINATION</p> <p>24 BY MR. RAMSEY:</p> <p>25 Q. Good afternoon.</p>	<p style="text-align: right;">Page 147</p> <p>1 discernible differences?</p> <p>2 A. No. I don't -- I don't know that</p> <p>3 there's -- the prosecutor's office runs differently in</p> <p>4 both places, but -- as far as how they handle cases</p> <p>5 and how they go forward. But our representation -- I</p> <p>6 mean, there may be some reaction to those changes,</p> <p>7 but, you know, we're --</p> <p>8 Q. But the public defender's office that</p> <p>9 you're covering with your district --</p> <p>10 A. Uh-huh.</p> <p>11 Q. -- there's no discernible difference</p> <p>12 between how you would handle a case in Jackson County</p> <p>13 versus -- or I'm sorry. In Kanas City versus</p> <p>14 Independence?</p> <p>15 A. Right.</p> <p>16 Q. Now, this is a question as to your</p> <p>17 experience: Is there a trend of -- of crimes, of</p> <p>18 felonies, of misdemeanors that you see very frequently</p> <p>19 as opposed to crimes of potentially those who are not</p> <p>20 indigent would commit?</p> <p>21 I can clarify that question.</p> <p>22 A. Okay.</p> <p>23 Q. What types of felonies did -- does your</p> <p>24 office not see frequently, if there are any?</p> <p>25 A. Well, I -- I think there are a bunch. I</p>
<p style="text-align: right;">Page 146</p> <p>1 A. Good afternoon.</p> <p>2 Q. So again, my name is Steven Ramsey, and I</p> <p>3 represent the State of Missouri and Governor Greitens.</p> <p>4 I have a number of questions for you. Feel free at</p> <p>5 any point, if we need a break, let me know, because I</p> <p>6 know we've been at this for some time.</p> <p>7 A. Sure.</p> <p>8 Q. I want to go back quite a ways, back to,</p> <p>9 like, almost 9:00-ish or so and understand the</p> <p>10 district a bit more.</p> <p>11 Right now, do you have a sense of how many</p> <p>12 criminal cases come in in Jackson County total?</p> <p>13 A. No. I mean, there's data on that. I</p> <p>14 haven't -- I haven't looked at that.</p> <p>15 Q. Okay.</p> <p>16 A. But I mean, that's achievable data. The</p> <p>17 courts keep records. I think the prosecutors keep</p> <p>18 records of filing.</p> <p>19 Q. And District 16 encompasses all of</p> <p>20 Jackson County?</p> <p>21 A. Yes.</p> <p>22 Q. And there aren't any differences between</p> <p>23 how your office handles a case that occurs in</p> <p>24 Kansas City versus Independence; is there's just one</p> <p>25 concerted district, or are there any, I guess,</p>	<p style="text-align: right;">Page 148</p> <p>1 mean, when I talk to rural offices, we don't have --</p> <p>2 like, when people will shoot a deer from a car or</p> <p>3 steal cattle. Things -- we don't have really any of</p> <p>4 those. I don't -- I mean, it's hard for me say</p> <p>5 compared with the private Bar. I think if you go</p> <p>6 prelim dockets, and you look at what types of cases</p> <p>7 have more private attorneys, because they -- they set</p> <p>8 up prelim dockets by the type of case, so more private</p> <p>9 attorneys go to DUI, driving dockets, which kind of</p> <p>10 makes sense, because if you can afford a car, then you</p> <p>11 may -- and you're in risk of losing your license, you</p> <p>12 probably can afford a lawyer. I don't -- I mean,</p> <p>13 everybody gets charged with stealing. Everybody</p> <p>14 gets charge -- like, there's a lot of drug crimes.</p> <p>15 There's a lot of -- and a lot of -- in Jackson County,</p> <p>16 it's a lot of serious felonies, rob 1s, assault 1s.</p> <p>17 Q. Forgive my ignorance. Would the -- the</p> <p>18 broad category of white collar crimes, would that ever</p> <p>19 come across your -- your purview?</p> <p>20 A. Probably not. I mean, I know that the</p> <p>21 prosecutor's office had a white collar crime guy who</p> <p>22 per -- or prosecuted a lot of stealing from</p> <p>23 unemployment, which didn't feel very white collar to</p> <p>24 me, but we represent those all the time. I mean, not</p> <p>25 all the time, but it goes -- it seems to go cyclical</p>

37 (Pages 145 to 148)

<p style="text-align: right;">Page 149</p> <p>1 how -- how many of these they file, but we certainly</p> <p>2 represent the -- the stealing by omission, as I call</p> <p>3 it, so stealing from unemployment, stealing food</p> <p>4 stamps, that sort of -- things along those like lines,</p> <p>5 but I wouldn't say true white collar. I feel like</p> <p>6 most white collar crime, at least in Jackson County,</p> <p>7 goes to the feds.</p> <p>8 Q. In your 20-plus years of experience, have</p> <p>9 you seen a trend in -- in receiving the same types of</p> <p>10 cases, or has there been a -- an uptick in a</p> <p>11 particular type of -- of felony, or I guess over the</p> <p>12 course of your -- your time with the Missouri Public</p> <p>13 Defender system, how -- what trends have you seen just</p> <p>14 in terms of the types of cases, if any?</p> <p>15 A. Well, I think there's more -- they say the</p> <p>16 violent crime is up, so I mean, we have a lot of</p> <p>17 murders. We have a lot more weird Internet-related</p> <p>18 things than when I -- we didn't really have much</p> <p>19 Internet when I started. But we've always had</p> <p>20 robberies. There's a lot that's consistent. The type</p> <p>21 of -- the type of possession. I mean, when I started</p> <p>22 years ago, there was a lot of crack, there was a lot</p> <p>23 of meth; and now, you have a lot more -- I mean, crack</p> <p>24 and meth are still there, absolutely, but you have a</p> <p>25 lot more pills, you have a lot more opioid, so there</p>	<p style="text-align: right;">Page 151</p> <p>1 about our caseloads.</p> <p>2 Q. So it may be difficult because there are so</p> <p>3 many, but what types of organizations, if you can --</p> <p>4 A. Oh, organizations? Well --</p> <p>5 Q. Organizations, outlets, firms.</p> <p>6 A. I don't know about organizations. German</p> <p>7 May represented me on my contempt hearing. I've</p> <p>8 certainly -- I have a lot of friends who are lawyers,</p> <p>9 so I have friends -- I've talked to people at Hush.</p> <p>10 I've talked to people at Stinson. I've talked to</p> <p>11 people at Shook. I've talked to -- I've -- I mean,</p> <p>12 part of it is I also do MCRC, so I'll drop off files,</p> <p>13 and then they'll say, "I saw you in the paper," and</p> <p>14 there's a discussion about what's going on. But as</p> <p>15 far as I -- it's -- I don't think there's been any --</p> <p>16 you know, well, a number of people told me to reach</p> <p>17 out to the ACLU with regard to my Rule 4 litigation;</p> <p>18 however, they're currently suing us, so that isn't</p> <p>19 happening.</p> <p>20 MR. WILLIAMSON: No comment.</p> <p>21 A. But I don't know what -- like, specific --</p> <p>22 I mean, I'm not -- look, I'm a mom of three kids, so I</p> <p>23 literally work, you know, a dozen to 15 hours a day,</p> <p>24 and I try to spend time with my kids. I don't -- I'm</p> <p>25 not a member of a bunch of Bar organizations. I'm not</p>
<p style="text-align: right;">Page 150</p> <p>1 have been trends sort of -- the drug crimes definitely</p> <p>2 trend different ways. I can't think -- I mean, but --</p> <p>3 guns -- well, now, we have fewer guns because carrying</p> <p>4 a concealed weapon is legal, so we have a whole host</p> <p>5 of gun cases that we routinely tried that aren't</p> <p>6 prosecuted any more.</p> <p>7 Q. Two steps back, I remember you testifying</p> <p>8 earlier too that you had conversations with Counsel in</p> <p>9 terms of your preparation for this deposition?</p> <p>10 A. Uh-huh.</p> <p>11 Q. Have you also been in contact with other</p> <p>12 individuals or organizations about the -- I guess</p> <p>13 about the content of this litigation or just caseloads</p> <p>14 and workloads generally?</p> <p>15 A. Not about the content of this litigation.</p> <p>16 Caseload, workload, absolutely. I mean, there was a</p> <p>17 fair amount of press surrounding our Rule 4</p> <p>18 initiative, and I've had -- I mean, I had counsel</p> <p>19 represent me at my show cause hearing. I've had</p> <p>20 multiple firms talk to me about public defender issues</p> <p>21 as well as things along those lines, but I've -- I've</p> <p>22 never discussed this particular lawsuit. But</p> <p>23 there's -- I mean, there's a lot of talk around sort</p> <p>24 of -- and there's a lot of stuff in the newspaper, so</p> <p>25 there's a lot of people you run into that talk to you</p>	<p style="text-align: right;">Page 152</p> <p>1 a member -- I -- I don't have time for any of it,</p> <p>2 quite frankly. So I -- yeah. I'm not a member of a</p> <p>3 bunch of organized groups. I don't -- I don't have</p> <p>4 time. And it's -- to me, that's one of the things</p> <p>5 that hurts public defenders more, is that we don't --</p> <p>6 we're really isolated, and it's really easy for us to</p> <p>7 sort of get stuck, because we don't have -- we don't</p> <p>8 join Bar organizations. Well, a lot of my attorneys</p> <p>9 can't afford it, but I also -- they don't have the</p> <p>10 time to do it. They're going to be in trial, or</p> <p>11 they're going to be in jail, or they're going to be</p> <p>12 all these other places.</p> <p>13 Q. (By Mr. Ramsey) Switching gears a bit in</p> <p>14 terms of how your office determines whether a</p> <p>15 particular criminal defendant is indigent --</p> <p>16 A. Okay.</p> <p>17 Q. -- walk me through that process, if you</p> <p>18 could.</p> <p>19 A. So generally, a legal assistant is going to</p> <p>20 either meet them over in court, meet them over in</p> <p>21 jail. We take walk-ins. And really, any attorney in</p> <p>22 court if asked to screen someone -- I mean, I -- when</p> <p>23 I'm in court, I screen people all the time. We have</p> <p>24 an application. We follow the federal poverty</p> <p>25 guidelines. I mean, our application is on our</p>

38 (Pages 149 to 152)

<p style="text-align: right;">Page 153</p> <p>1 website. It's not at all a secret. And you fill out 2 the application, they qualify or they don't, you mark 3 them indigent, you let them know the determination, 4 and you go back to the office and -- and -- and you 5 either have a file. Right now, you might be on the 6 postponement list, something along those lines. So 7 it's really sort of self-reporting. I mean, a big 8 chunk of our folks are in jail, so they're not 9 working. If they have a home, they're not going to -- 10 it's usually -- there's -- it's usually not very 11 tricky in Jackson County, the poverty. I know rural 12 offices have people who they think are hiding assets. 13 I don't get that sense here. But it's true we 14 don't -- we don't double check, and we don't have the 15 resources to do that, so if someone says they have no 16 assets, I don't run a search of their personal 17 property tax. I don't run a search -- I don't -- that 18 would be 20 minutes we don't have.</p> <p>19 Q. So if I'm understanding you correctly, the 20 screening process is the application?</p> <p>21 A. Yep.</p> <p>22 Q. And you all follow the federal poverty 23 guidelines?</p> <p>24 A. Uh-huh.</p> <p>25 Q. And if a person says, "Hey, I make under</p>	<p style="text-align: right;">Page 155</p> <p>1 that you're in, that you will receive representation 2 if the system is able?</p> <p>3 A. Well, in general, I mean, there's -- 4 Chapter 600 has guidelines on it, so you also take 5 into account assets. You take into account other 6 things. I don't know the number. I mean, I -- 7 there -- we -- we keep the data. I have a -- I have a 8 drawer full of denied applications. We keep those 9 app -- you know, they get archived. They get sent 10 places. So we certainly -- people get denied all the 11 time. Now, that being said, the majority of our 12 denied applications, we are then appointed -- the 13 judge will make their own determination. A client is 14 and allowed to appeal our findings to the Court, and 15 nine times out of ten, even the people we denied 16 become our clients because the judges find them 17 indigent and appoint us anyway.</p> <p>18 Q. Now, does that happen at a hearing? Like, 19 do you have an opportunity to say, "Here's why we made 20 this determination," or is that held outside of the 21 courtroom?</p> <p>22 A. Sometimes. Sometimes they -- generally, 23 we're there. Sometimes the judges do it when we're 24 not there.</p> <p>25 Q. Uh-huh.</p>
<p style="text-align: right;">Page 154</p> <p>1 those," they will receive representation if you're 2 able?</p> <p>3 A. Right. You have to be poor enough to 4 qualify, basically.</p> <p>5 Q. And did I hear you correctly that there are 6 no controls for that or there's no monitoring; it's a 7 self-monitoring type of a system?</p> <p>8 A. It's -- yes. It's generally 9 self-reporting. I mean, I guess if we suspected 10 someone, we could look at it. I've certainly had 11 clients who have bonded or something happened where I 12 moved to withdraw based on I -- I don't think they 13 apply -- or they don't qualify for us, that we weren't 14 aware of funding or somehow, you know, they made a 15 \$20,000 bond, and they have the resources to hire 16 counsel if that happened, but it generally has to sort 17 of come up on us.</p> <p>18 Q. Now, this may be difficult to ascertain 19 just sitting here, but do you have a sense of the 20 rejection rate for those who apply? And I know you 21 mentioned that if they fill out the application, they 22 generally come in.</p> <p>23 A. Uh-huh.</p> <p>24 Q. But is that close to 100 percent, bright 25 line rule, if you're under the federal poverty lines,</p>	<p style="text-align: right;">Page 156</p> <p>1 A. They just say, "Were you screened?" And 2 the client says, "Yes, and I was denied." And then 3 they'll say, "Do you have a house, do you have 4 some" -- in court the other day, somebody's mom 5 stood -- or we don't even know how she was related to 6 the client, and was like, "He doesn't have money." 7 Because he's like, "I'm going to hire someone." She 8 goes, "No, he doesn't have money." And my lawyers 9 were just aghast, because they were like, how -- they 10 don't even who that woman is who is answering his 11 financial questions to have him found indigent, which 12 the judge did. The judges appoint us a lot, and did 13 before -- even before now, where they're appointing us 14 all the time.</p> <p>15 Q. So I'm understanding two different tracks 16 here. One is the determination but the Missouri 17 Public Defender's system?</p> <p>18 A. Uh-huh.</p> <p>19 Q. And then the second is the consideration 20 of, even when we reject some, we'll get appointed 21 there?</p> <p>22 A. Yes.</p> <p>23 Q. Focusing on the former --</p> <p>24 A. Uh-huh.</p> <p>25 Q. -- so if I heard you correctly, you all do</p>

<p style="text-align: right;">Page 157</p> <p>1 reject applicants, and I think you said all the time.</p> <p>2 A. Well, I don't -- I can't tell you what</p> <p>3 percent, but we definitely do. We have a drawer full</p> <p>4 of rejected applications.</p> <p>5 Q. Okay. So there's -- and if you're unable</p> <p>6 to, let me know, and I'll just move on.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Would you peg it at 80 percent approval --</p> <p>9 acceptance rate or 90?</p> <p>10 A. I would definitely say it's high. I don't</p> <p>11 know the percentage.</p> <p>12 Q. Okay. Okay. Here's a -- a question, and</p> <p>13 it's related to what goes into the -- the</p> <p>14 determination. And let me know if this never happens.</p> <p>15 But say a criminal defendant has multiple cases --</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- and in -- you know, let's say he has</p> <p>18 four cases. Out of the three cases, he has private</p> <p>19 counsel?</p> <p>20 A. Right.</p> <p>21 Q. On the fourth --</p> <p>22 A. Yeah.</p> <p>23 Q. -- he wants to have --</p> <p>24 A. Uh-huh.</p> <p>25 Q. -- a public defender represent him because</p>	<p style="text-align: right;">Page 159</p> <p>1 is that a determination that goes into whether or not</p> <p>2 they're represented during their --</p> <p>3 A. No.</p> <p>4 Q. No? Okay.</p> <p>5 A. It hasn't been, to my knowledge.</p> <p>6 Q. Okay.</p> <p>7 A. If people are screening that out -- you</p> <p>8 know, crazy things happen all the time, but I -- I</p> <p>9 mean, it -- we can -- it's supposed to be a civil</p> <p>10 matter. It's supposed to be completely separate. So</p> <p>11 we screen people in new even if they had a private</p> <p>12 attorney on the underlying case.</p> <p>13 Q. And now, I'm not trying to trick you on</p> <p>14 this one.</p> <p>15 A. Sure.</p> <p>16 Q. I'm just trying to understand that if it's</p> <p>17 a fairly bright line rule for who qualifies for public</p> <p>18 defender representation, of these various factors, how</p> <p>19 would they have been taken into consideration?</p> <p>20 Said another way, if I fill out the</p> <p>21 application, and I would normally -- normally would be</p> <p>22 eligible, but there are these other things going on,</p> <p>23 when does that -- when do the other things going on</p> <p>24 come into play in terms of whether you accept or</p> <p>25 reject a particular candidate?</p>
<p style="text-align: right;">Page 158</p> <p>1 I guess his assets have been --</p> <p>2 A. Depleted, yeah, sure.</p> <p>3 Q. By funding the former cases. Is that a</p> <p>4 relevant factor in whether or not the public defender</p> <p>5 system ascertains whether he would -- reaches that</p> <p>6 poverty line for -- for representation?</p> <p>7 A. I think it's -- people bring it into</p> <p>8 consideration, but I mean, we used to reject -- anyone</p> <p>9 who had a private attorney, we rejected outright, and</p> <p>10 then there was some changes in the law saying we</p> <p>11 couldn't do that. So we definitely -- well, one, we</p> <p>12 try to get -- it's -- it's a mess. One, it's legally</p> <p>13 a mess, just because you're supposed to now -- if</p> <p>14 there's any plea that's going to happen, you have to</p> <p>15 consult with that lawyer. But I -- I wouldn't say --</p> <p>16 it used to be a very strong factor, and it no longer</p> <p>17 is.</p> <p>18 Q. I see. And that's due to some legal</p> <p>19 considerations that --</p> <p>20 A. Yes.</p> <p>21 Q. Same type of question, different scenario.</p> <p>22 Case and chief is over, and now, we're talking about</p> <p>23 probation revocation.</p> <p>24 A. Uh-huh.</p> <p>25 Q. So say someone had private counsel before,</p>	<p style="text-align: right;">Page 160</p> <p>1 A. Well, I think if you qualify under the</p> <p>2 numbers, you'd probably be accepted --</p> <p>3 Q. Okay.</p> <p>4 A. -- whether you had a private attorney on</p> <p>5 another case or not.</p> <p>6 Q. Got it. Thank you.</p> <p>7 Are there any situations where the public</p> <p>8 defender system will enter before they have been --</p> <p>9 before you all have been -- well, your district,</p> <p>10 pardon me. In your district, are there situations</p> <p>11 where you all will enter before being appointed or</p> <p>12 before a determination is made for indigency?</p> <p>13 A. Only if we're forced to enter. I mean,</p> <p>14 we're going to make a -- an indigency determination</p> <p>15 before we enter. Juvenile court appoints us all the</p> <p>16 time without any application ever being taken. And</p> <p>17 what we try and do is contact them and get an</p> <p>18 application before we have to make it a legal deal. I</p> <p>19 mean, a lot of the clients are indigent, and we're</p> <p>20 certainly not fighting representing qualifying</p> <p>21 clients. Or we haven't, just like -- now, we are</p> <p>22 because of our ethics. But before that, we pretty</p> <p>23 much took everybody, but you have to be qualified.</p> <p>24 You can't physically open a file in our computer</p> <p>25 without an application.</p>

40 (Pages 157 to 160)

<p style="text-align: right;">Page 161</p> <p>1 Q. Now, say, the system accepts a particular 2 criminal defendant, and then after the fact, right, a 3 prosecutor -- or it comes to your knowledge that the 4 person may have considerably more assets. 5 A. Sure. 6 Q. And I know you alluded to this before. How 7 does that process work? Is that upon -- is that 8 burden upon the individual attorney who is 9 representing the case to say, "This seems a little -- 10 little funny to me," and to make a motion to withdraw, 11 or how does that process work? 12 A. Right. So if -- if during the course of 13 representation, people become aware that the person 14 has assets or didn't disclose assets, something -- 15 Q. Uh-huh. 16 A. -- they'll move to withdraw. Or a lot -- 17 what happens most commonly is they make a large bond, 18 which sometimes indicates that, you know, they have 19 disposable income. But we -- we definitely have 20 attorneys move to withdraw in those cases. 21 Q. Next wave, if you will, after the -- those 22 determinations have been made -- 23 A. Uh-huh. 24 Q. -- and the cases come to your, I guess your 25 desk, and you're deciding how to -- to divvy them up,</p>	<p style="text-align: right;">Page 163</p> <p>1 Q. 2017. Pardon me. 2 A. Uh-huh. 3 Q. Do you have any sense for how you stack up 4 compared to other offices within Missouri that are 5 comparable in size? 6 A. There's not many offices that are -- I 7 mean, we're the largest -- Kansas City is the largest 8 in the state. I think Saint Louis has maybe four 9 fewer attorneys, and then you go down to, like, 24, so 10 I think Saint Louis has a fairly high turnover rate as 11 well. I know for us, I'm lucky that I get to fill, 12 because we have rural offices who have had positions 13 open for a year that they can't fill, so I'm lucky in 14 that sense. But I don't think I'm -- I mean, I think 15 that 20 to 30 percent is pretty normal. It slowed 16 down a little around, like, 2009 where there weren't 17 any jobs, but aside from that, it's been -- it's been 18 pretty consistent, and on the higher end. 19 Q. And you had testified earlier as to a 20 number of educated guesses on what you think would be 21 necessary to fill these positions in a sense -- in a 22 way that would be ethical and -- 23 A. Uh-huh. 24 Q. -- and would be reasonable. Are those 25 determinations -- and I -- I remember you were saying</p>
<p style="text-align: right;">Page 162</p> <p>1 and I believe you said your deputy takes care of most 2 of that -- 3 A. Uh-huh. 4 Q. -- that process. Are there any local 5 policies in place for how you divvy them up, or is it 6 more or less discretionary? 7 A. It's pretty discretionary. I know 8 historically, we can pull up individual caseloads. I 9 do have -- I guess I do. So I have -- my attorneys 10 are on teams, and each team has an on week so that 11 they're not running around like crazy. So there's 12 four teams, so each week, they -- they get a -- 13 assigned the cases that are going to be prelimed 14 during that week. So teams may get some of an 15 overload because it's their on week, and then the next 16 week, it will be a different team's on week. So we do 17 try and do that mostly for the efficiency of the 18 lawyers so that they can -- so that it groups their -- 19 their prelim court dates together during a week out of 20 the month instead of just on any given day. 21 Q. Concerning your particular office, and I'm 22 speaking specifically, pardon me, of the turnover 23 rate, and I believe you said that nine people had been 24 replaced in 2016? 25 A. '17.</p>	<p style="text-align: right;">Page 164</p> <p>1 that they were based upon your experience. 2 A. Sure. 3 Q. Are they based on anything else, like 4 comparable offices in Missouri, private practice 5 across the states, or is this -- or were those guesses 6 your -- 7 A. Well, I haven't -- I guess I'm -- I've not 8 reached out to private attorneys on the number of 9 cases they have. I mean, whenever I talk to the firms 10 about our numbers, they shake their heads. I think it 11 was more, okay, we have -- we're entered on 4100 open 12 cases. If, you know, I want to get that number down 13 to a reasonable -- it was more sort of math. But -- 14 and that's me presuming that 40 cases is a reasonable 15 caseload for people. I -- that's not -- I don't think 16 40 murders a reasonable caseload for someone, so -- or 17 40 all serious crimes. So again, take that with the 18 caveat that it depends on the caseload, it depends the 19 level on -- of the level of experience of the 20 attorney, it depends on all of those factors. Yeah. 21 He just said, how many would you like? And I was 22 like, oh, I'll take that. I mean, if you gave me 23 100 lawyers, I'd be thrilled, but -- and I -- I think 24 they'd all work. 25 Q. When you receive these cases, just another</p>

41 (Pages 161 to 164)

<p style="text-align: right;">Page 165</p> <p>1 question here, do you track them by the charges that 2 are on a particular case or by criminal defendant? 3 A. Well, we have multiple views in our system, 4 so I -- most people look up by name or case number, 5 but I can look up by primary charge. I mean, we have 6 a lot of cases with multiple charges, so we usually 7 list the primary charge as the most serious or one of 8 the most serious, and so I can look at the type of 9 case under primary charge. I can search that way. I 10 mean, I could -- I search -- when the Bazell news came 11 out, I searched "stealing," and I think I had 10,000 12 cases. So there are ways to search other things in 13 the database, if that makes sense. There's a variety 14 of views and search methods. 15 Q. Now -- so I -- I understand that the system 16 at large has annual trainings for various defenders, 17 and those are mandated upon particular assistant 18 public defenders? 19 A. Right. 20 Q. In your office, you had mentioned that 21 there are the additional trainings over the lunchtime 22 period? 23 A. Uh-huh. 24 Q. Were any of these additional lunchtime 25 period trainings focused on workload or -- or caseload</p>	<p style="text-align: right;">Page 167</p> <p>1 trial skills, you can start in October; you may not 2 have trial skills until nine months in. You might 3 have trial in that amount of time. So there's a lot 4 of -- I mean, we do a lot of stuff that is pretty 5 basic. Like, here's impeachment, here's -- or here 6 are the discovery rules, and here's how to enforce 7 them. And because we have -- you know, basically 8 chronic turnover, we're sort of constantly -- you only 9 hit this section, and then some of them are gone, and 10 then new people are in. 11 Q. Concerning the funds for representation; 12 right? So after you bring someone into the system, 13 and they -- they're eligible, that's a -- is that a 14 flat fee for the criminal defendants? 15 A. The fee? 16 Q. Yes, ma'am. 17 A. That's my understanding, yes. 18 Q. So it's not a sliding scale of various 19 folks on the various levels of the -- 20 A. Well, the fee is depending on the type of 21 case. 22 Q. Okay. 23 A. There used to be more of a sliding skill 24 about whether you took it to trial or not or 25 whether -- but the fee is charged -- yeah. So I think</p>
<p style="text-align: right;">Page 166</p> <p>1 management issues, or any other training for that 2 matter? 3 A. I don't think I've done an internal 4 caseload management issue. I mean, the statewide 5 training has a variety of tracks just with hundreds of 6 people going. So I do think there are -- I think 7 there have been sessions on keeping yourself 8 organized, relaxation, you know. I mean, there's a 9 variety of people that come and -- and talk in a 10 three-day training. What all of those are, I don't 11 know, but I -- I tend to be more of a law nerd, and I 12 tend to track toward less about self-care and more 13 about where -- where the legal issues, and those would 14 be the tracks that I would go to. 15 Q. What other areas of focus in your district 16 have you seen fit to train your district defenders -- 17 or pardon me, your assistant public defenders in your 18 district on? And who makes that call? I apologize 19 for interrupting. 20 A. No. I understand. So sometimes new 21 things -- so, you know, I had one of my lawyers 22 present on Daughbert, because that's a new area of 23 criminal law, and it's a significant shift from Frye 24 to Daughbert. You know, the problem with our 25 statewide trainings is, you know, someone goes to</p>	<p style="text-align: right;">Page 168</p> <p>1 an A felony is one thing, a probation violation is one 2 thing. That's my understanding. 3 Q. Okay. And in juvenile cases, does the 4 parent or guardian pay that or -- 5 A. There's no fee for clients under -- we 6 don't charge clients who cannot enter into a contract. 7 Q. Turning to the use of funds for depositions 8 and discovery -- 9 A. Uh-huh. 10 Q. -- and I believe you had mentioned it was 11 the encumbrance for a fund or the encumbrance level? 12 A. Right. 13 Q. Are there any policies guiding -- any local 14 district policies guiding how many depositions one may 15 take if they have the time? 16 A. Well, I don't think there's -- there's a 17 policy on it. I mean, in general, people discuss with 18 their team leader, and they can discuss with me, here 19 are the people. I mean, I've never had a trial where 20 I deposed every single person. I would have liked to, 21 but I also get that there's some witnesses that -- 22 that people would consider less important or less -- 23 you know, that a dep -- deposition is less necessary. 24 So -- and actually, the only time I've ever seen 25 anyone request all the people is when they're unable</p>

<p style="text-align: right;">Page 169</p> <p>1 to contact any of them, and they think, the only way</p> <p>2 I'm going to get to talk to these people is if I</p> <p>3 subpoena them for deposition because I've not been</p> <p>4 able to get them to talk to me voluntarily.</p> <p>5 Q. In your career up until this point, have</p> <p>6 you ever been denied a deposition that you wanted to</p> <p>7 take?</p> <p>8 A. No.</p> <p>9 Q. Have you ever denied a deposition for one</p> <p>10 of the attorneys who you supervised that they wanted</p> <p>11 to take?</p> <p>12 A. I -- I have. Not very many. Although, it</p> <p>13 generally wasn't based -- maybe I've had one or two</p> <p>14 that were based on, you don't need to do a deposition</p> <p>15 there. More based on sometimes new attorneys have</p> <p>16 some sort of farfetched ideas about how things go, and</p> <p>17 it's more of a, like, are you sure you want to do</p> <p>18 this? Are you sure this the route you want to get?</p> <p>19 Or sometimes, are you sure you want to create bad</p> <p>20 evidence?</p> <p>21 Q. Same question, slightly different topic.</p> <p>22 Have you, personally, ever been denied an expert</p> <p>23 witness that you felt was necessary for your case?</p> <p>24 A. No.</p> <p>25 Q. And have you denied an expert to one of the</p>	<p style="text-align: right;">Page 171</p> <p>1 encumbrance requests, so denials, like an official</p> <p>2 denial on the computer would be very rare. Then I do</p> <p>3 unofficial, "edit this," all the time. Probably</p> <p>4 daily.</p> <p>5 Q. Do you have a sense for if I -- and I know</p> <p>6 you -- you had mentioned and you had testified earlier</p> <p>7 that you don't have a -- a ton of misdemeanors that</p> <p>8 you all --</p> <p>9 A. Right.</p> <p>10 Q. -- are handling, but is there any</p> <p>11 limitations for wanting to use an expert in a</p> <p>12 misdemeanor case as opposed to a felony case?</p> <p>13 A. Nope.</p> <p>14 Q. Okay.</p> <p>15 A. I -- I say, "There are no small cases," and</p> <p>16 I say that to my lawyers who say, "I don't want</p> <p>17 misdemeanors." I'm like, it's important -- they're</p> <p>18 all important to the client.</p> <p>19 Q. Step back, the policy procedure, when you</p> <p>20 want to -- to implement or promulgate is probably the</p> <p>21 improper word. But when you want to implement a</p> <p>22 policy in your district --</p> <p>23 A. Uh-huh.</p> <p>24 Q. -- what goes into that? Is it merely a</p> <p>25 decision based upon your judgment, and you send an</p>
<p style="text-align: right;">Page 170</p> <p>1 attorneys that you supervised that they felt was</p> <p>2 necessary to their case?</p> <p>3 A. No. I don't -- I'm just the mid level</p> <p>4 approver for that, so I have seen people get denied.</p> <p>5 However, I generally punt it up if -- if there's</p> <p>6 something I -- I'm usually a "yes," and then if it</p> <p>7 gets denied, it's at the -- the higher level.</p> <p>8 Q. And do you have a sense for why those were</p> <p>9 denied? And I know that -- the systemwide question,</p> <p>10 that's not what I'm asking you. But do you have any</p> <p>11 personal knowledge for why requests from your office</p> <p>12 for expert testimony --</p> <p>13 A. Uh-huh.</p> <p>14 Q. -- were denied in the past?</p> <p>15 A. It's usually money.</p> <p>16 Q. Money?</p> <p>17 A. Well, could you get a cheaper expert, could</p> <p>18 you get someone who's local, could you -- you know, we</p> <p>19 think maybe we could do this in-house. But it's all</p> <p>20 about saving money, or that's been my impression.</p> <p>21 I'm -- I've -- I don't know everyone that's obviously</p> <p>22 been denied statewide, but if I had somebody who -- I</p> <p>23 send back requests all the time to say, this isn't</p> <p>24 on point, or this isn't something -- I have people</p> <p>25 edit -- probably one a day, I have people edit</p>	<p style="text-align: right;">Page 172</p> <p>1 e-mail to everyone and say, "Here's the new policy,"</p> <p>2 or walk me through that.</p> <p>3 A. Yes. Although, I -- I don't think I've</p> <p>4 ever implemented a policy with not -- without</p> <p>5 talking -- like I said, I have a pretty good</p> <p>6 relationship with upper management, and I appreciate</p> <p>7 their feedback and their thoughts about how things go.</p> <p>8 As well as, I don't want to -- I've not memorized</p> <p>9 every policy, local policy necessarily, and I</p> <p>10 certainly haven't memorized every MSPD policy, and</p> <p>11 it's good to know if there's a conflict. But I</p> <p>12 don't -- I've only -- aside from minor things, we're</p> <p>13 going to screen this person now, I've probably only</p> <p>14 implemented three probably major policies in my</p> <p>15 tenure. And that's first-time felon, vertical</p> <p>16 representation, I don't even know what the third would</p> <p>17 be. Maybe this -- the Rule 4. So to say that I'm</p> <p>18 implementing new policies all the time, I'm not.</p> <p>19 Q. I guess my question is: Could you if you</p> <p>20 wanted to implement --</p> <p>21 A. I think I probably could.</p> <p>22 Q. Okay. And so those questions when you were</p> <p>23 reaching out to central -- to central management or</p> <p>24 upper management, that's just because you have that</p> <p>25 relationship and you want their input versus having to</p>

43 (Pages 169 to 172)

<p style="text-align: right;">Page 173</p> <p>1 seek approval from them; is that --</p> <p>2 A. Right. I think --</p> <p>3 Q. Okay.</p> <p>4 A. Let me think. I know when we went forward</p> <p>5 on first-time felon, in fact, my deputy who then</p> <p>6 became my supervisor tried to make it statewide, and</p> <p>7 it didn't become a -- a policy statewide. Other</p> <p>8 people opposed it. So I have a local office policy</p> <p>9 that didn't succeed statewide.</p> <p>10 Q. And would -- could you tell me more about</p> <p>11 the -- the first time felony policy? And I'll ask</p> <p>12 about the vertical --</p> <p>13 A. Sure.</p> <p>14 Q. -- representation in just a moment.</p> <p>15 But my understanding was that if someone is</p> <p>16 going to plead to a felony for the first time, and</p> <p>17 they're not currently a felon --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- they have to have a conversation with</p> <p>20 you first?</p> <p>21 A. Correct.</p> <p>22 Q. Is that a -- they have to seek approval?</p> <p>23 You have to say, "Yes, you may proceed," or is it just</p> <p>24 a conversation that --</p> <p>25 A. Well, I do have to say, "Yes --</p>	<p style="text-align: right;">Page 175</p> <p>1 really to keep us from making people felons who</p> <p>2 don't -- you know, making a decision either to get out</p> <p>3 of jail or some -- because often, first-time felons</p> <p>4 get probation office -- offers, and they really want</p> <p>5 to get out, and getting the protection of a lawyer</p> <p>6 who's not really a lawyer. You know, we're not</p> <p>7 meeting any of our ethical standards there either,</p> <p>8 so --</p> <p>9 Q. And then vertical representation, I presume</p> <p>10 that's from beginning to end --</p> <p>11 A. Uh-huh.</p> <p>12 Q. -- of a particular case that was produced</p> <p>13 to you all?</p> <p>14 A. Right. When I started, we had docket</p> <p>15 attorneys -- we had vertical representation on serious</p> <p>16 cases only, and we had docket attorneys. So if you</p> <p>17 had a tampering case and, you know, stealing of a car,</p> <p>18 you would get a separate lawyer at prelim, you'd get a</p> <p>19 separate lawyer at the -- and "separate" meaning they</p> <p>20 represented everybody on that docket, so 20 to 30</p> <p>21 people. So -- who you were supposed to have read</p> <p>22 their police reports and have a client relationship</p> <p>23 with, and that attorney wasn't entering. So you'd get</p> <p>24 a separate lawyer at prelim, a separate lawyer at the</p> <p>25 settlement conference, a separate lawyer at</p>
<p style="text-align: right;">Page 174</p> <p>1 Q. Okay.</p> <p>2 A. -- you can proceed." And so I have a</p> <p>3 conversation. And largely, I ask them what they've</p> <p>4 investigated. If someone's going to trial, and it's</p> <p>5 the morning of trial, and the client says, "I want the</p> <p>6 deal," and we've investigated the case, that is the</p> <p>7 client's call. What I think we can't do is plead</p> <p>8 people to felon -- well, really, we shouldn't do it on</p> <p>9 any case, but first-time felon is the only one I have</p> <p>10 a policy on that and that I check. We should not be</p> <p>11 pleading people and saying we're competent counsel</p> <p>12 when we're not. Representing themselves as competent</p> <p>13 counsel and standing there is a problem to me. Have</p> <p>14 we pled first-time felons that we've done -- not done</p> <p>15 work on? Well, historically, many. And more</p> <p>16 recently, yes. Some -- we've had judges order people</p> <p>17 to plead people, because the client says, "I want it."</p> <p>18 What -- what we've done, generally, is if a client</p> <p>19 wants it, and we've done no work, we've asked to move</p> <p>20 to withdraw and let client plead pro se, which the</p> <p>21 Courts are really uncomfortable with; although,</p> <p>22 they're not uncomfortable with us saying we've done</p> <p>23 nothing on the case, and we're essentially a potted</p> <p>24 plant.</p> <p>25 But that's -- the first-time felon was</p>	<p style="text-align: right;">Page 176</p> <p>1 arraignment, a separate lawyer at the second</p> <p>2 settlement conference that generally happens, and then</p> <p>3 the case would be assigned after you got sent to a</p> <p>4 trial division, which -- so you would have gone</p> <p>5 through a handful of court dates, probably four months</p> <p>6 to eight months of representation without a single</p> <p>7 lawyer entering, very little investigation. Hopefully</p> <p>8 you got police reports. And so what I did is said,</p> <p>9 "You're going to assign this person from beginning to</p> <p>10 end," which is what the ABA guidelines say, and it's</p> <p>11 really the only sensical way to practice.</p> <p>12 Q. Do you have a sense for whether most</p> <p>13 districts or any districts that you're aware of</p> <p>14 outside of District 16 follow the vertical</p> <p>15 representation as opposed to horizontal or --</p> <p>16 A. I think all of them do. I mean, in most</p> <p>17 rural counties, you have one lawyer per county, so</p> <p>18 whether it be by intention or by convenience, that</p> <p>19 attorney is going to follow every case in that county</p> <p>20 from beginning to end. I would -- ours was one of the</p> <p>21 last offices to have docket attorneys. And that was</p> <p>22 in 20 -- I mean, we went vertical in 2012, so we've</p> <p>23 been vertical almost five years.</p> <p>24 Q. Returning to experts, and -- and those</p> <p>25 funds utilized for them, is there a time-keeping or</p>

44 (Pages 173 to 176)

<p style="text-align: right;">Page 177</p> <p>1 time tracking system for the use of experts?</p> <p>2 A. I'm not sure the -- that we're tracking</p> <p>3 their time?</p> <p>4 Q. Yes, ma'am.</p> <p>5 A. Well, they are supposed to bill by the</p> <p>6 hour. When we do a request, in the request, we are</p> <p>7 supposed to put the expert's hourly rate in their</p> <p>8 estimates of hours. And if they need more hours, we</p> <p>9 are supposed to do an updated request that talks about</p> <p>10 approximate hours. The request should have their</p> <p>11 hourly rate. I mean, if we're talking about</p> <p>12 testimony, sometimes testimony is a different rate for</p> <p>13 certain experts, things like that. All of that should</p> <p>14 be in the request.</p> <p>15 Q. And does your office -- or do you maintain</p> <p>16 a list of potential experts for your attorneys, or is</p> <p>17 that a burden on the actual attorney to research and</p> <p>18 find an expert?</p> <p>19 A. Well, we have -- we have an expert witness</p> <p>20 database for experts we have used. Obviously, I</p> <p>21 don't -- I mean, I wouldn't recommend just pulling any</p> <p>22 old person off that, because the -- they may not have</p> <p>23 testified well. But then sometimes, I think you can</p> <p>24 contact the money people and say, "Who has used these</p> <p>25 experts?" So you can get in communication with them</p>	<p style="text-align: right;">Page 179</p> <p>1 A. Currently, no. Have we for years? Yes.</p> <p>2 Q. Did you have a sense for when that began</p> <p>3 and ended?</p> <p>4 A. No. I really don't. I mean, it's been in</p> <p>5 the last five years, I think. But I don't -- we spent</p> <p>6 years time tracking. I don't recall the -- I -- not</p> <p>7 at all.</p> <p>8 Q. When you were tracking time -- well, two</p> <p>9 steps back: As a district defender -- well, before</p> <p>10 you were district defender, pardon me, and that -- was</p> <p>11 that 2011?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Did you track time before that?</p> <p>14 A. For periods, yes.</p> <p>15 Q. Okay. And in the most recent period after</p> <p>16 you were district defender, and you were tracking</p> <p>17 time --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- do you know if that was by charge, by</p> <p>20 case, by criminal defendant, by task?</p> <p>21 A. So when you tracked, you went in, and there</p> <p>22 was case specific and not case specific, and I think</p> <p>23 there was administrative. So if you were doing work</p> <p>24 on a particular client's case, you tracked that. If</p> <p>25 you were waiting in court at a docket, that's hard to</p>
<p style="text-align: right;">Page 178</p> <p>1 of whether they would be a valuable expert or not.</p> <p>2 Q. Was there ever a time -- were you -- were</p> <p>3 you, personally, ever coerced into utilizing an expert</p> <p>4 when you thought you did not need one?</p> <p>5 A. No.</p> <p>6 Q. Have you ever coerced any of your attorneys</p> <p>7 into utilizing an expert when they thought they didn't</p> <p>8 need one?</p> <p>9 A. I would hope not. I mean, I talk to my</p> <p>10 lawyers pretty much every appraisal, and almost every</p> <p>11 time, my suggestions are, you know, look into what</p> <p>12 experts are out there, because so many of my lawyers</p> <p>13 use so few experts.</p> <p>14 Q. Switching gears again, does your office</p> <p>15 oversee the collection of funds that are outstanding,</p> <p>16 or is that a central office mechanism?</p> <p>17 A. Fee funds?</p> <p>18 Q. Yes.</p> <p>19 A. No. I mean, I don't. I -- upper</p> <p>20 management, I believe, has a system. I don't.</p> <p>21 Q. Okay. So the districts do --</p> <p>22 A. I personally -- yeah. We don't take</p> <p>23 checks. We don't -- that would be a nightmare.</p> <p>24 Q. In your office currently, are you all</p> <p>25 tracking time for particular tasks in -- in cases?</p>	<p style="text-align: right;">Page 180</p> <p>1 track to a specific case. If you did administrative</p> <p>2 tasks sometimes -- some of them could be tracked to a</p> <p>3 case; some of them could not. So you'd go in, you'd</p> <p>4 select that, and then under that, you'd select, you</p> <p>5 know, whether you were doing investigation on a</p> <p>6 specific case, whether -- I mean, I did a lot of -- I</p> <p>7 have a lot of -- I mean, a lot of what I do is talk to</p> <p>8 people about stuff most of my day, so I do a lot of,</p> <p>9 like, general management that sort of thing. But some</p> <p>10 of it fairly got specific. I mean, we had to -- we</p> <p>11 had a special database we went into to track.</p> <p>12 Q. Do you recollect if there was any, like,</p> <p>13 type of time management controller or any type of</p> <p>14 control or monitoring of how individuals were entering</p> <p>15 their time?</p> <p>16 A. I'm not exactly sure what you mean.</p> <p>17 Q. Yeah. Was there a dedicated position in</p> <p>18 your district in your experience to someone managing</p> <p>19 the -- the time that people said that they were doing?</p> <p>20 So in other words, was there any oversight to the</p> <p>21 timekeeping?</p> <p>22 A. No. I -- I mean, if anything, I was always</p> <p>23 of the opinion my lawyers underreported because</p> <p>24 timekeeping was fairly arduous, and I don't know many</p> <p>25 of them said, "Well, I could be working on more cases</p>

45 (Pages 177 to 180)

<p style="text-align: right;">Page 181</p> <p>1 if you didn't make me track time." So I never worried</p> <p>2 about over-reporting. I did worry about</p> <p>3 under-reporting because I felt like a lot of my</p> <p>4 lawyers were doing work that they weren't tracking</p> <p>5 because they would -- the input took a lot of time.</p> <p>6 Q. Do you remember if that time system, that</p> <p>7 time tracking system -- and forgive me if -- if you</p> <p>8 answered this already -- if it tracked by a particular</p> <p>9 charge. So a felony A, I put -- I put in this much</p> <p>10 work on a felony A versus a felony B as opposed to --</p> <p>11 A. I think it did.</p> <p>12 Q. -- this criminal defendant?</p> <p>13 A. I -- I think -- well, I think you track by</p> <p>14 client and case number, because you could do it -- you</p> <p>15 could input it, and you could also go to the client's</p> <p>16 case, and then hit the button to add hours, and it</p> <p>17 would then specifically put in that case. Now, if</p> <p>18 there was multiple counts within a case, that's a --</p> <p>19 there's no idea what you could do, but I think you</p> <p>20 could do it both client and case specific. That's my</p> <p>21 recollection.</p> <p>22 Q. Do you remember if there was ever a</p> <p>23 training on how to track your time, or was it a --</p> <p>24 just something, an e-mail that was sent out that said,</p> <p>25 "Hey track your time from -- from here on out"?</p>	<p style="text-align: right;">Page 183</p> <p>1 but we also have, you know, cases with 18, 35 counts.</p> <p>2 We -- I mean, the opposite happens a lot too.</p> <p>3 Q. Is it more or less likely for a</p> <p>4 multiple-count criminal defendant to appear as opposed</p> <p>5 to a single-count defendant?</p> <p>6 A. I feel like in Jackson County, more. But I</p> <p>7 also think Jackson County prosecutors really</p> <p>8 consolidate -- consolidate as much as possible, or</p> <p>9 that's what my attorneys want to believe because they</p> <p>10 think that their cases are not being counted fairly,</p> <p>11 but when you have -- and in -- so if you have a</p> <p>12 robbery, you're going to have an ACH. I mean, if</p> <p>13 there's a -- like, the ACA is everywhere, especially</p> <p>14 if there's any sort of gun around, so I feel like more</p> <p>15 often than not, we have multiple counts. Or you know,</p> <p>16 a burglary almost always has a stealing, because</p> <p>17 that's why it's a burglary. There are a lot things</p> <p>18 that go in pairs.</p> <p>19 Q. Turning to the budget and how the budget</p> <p>20 operates with you as a district defender, I'm</p> <p>21 recalling that you testified that you -- there are</p> <p>22 various earmarks for how much money you can utilize</p> <p>23 for certain things?</p> <p>24 A. Uh-huh.</p> <p>25 Q. In your experience, have you ever run out</p>
<p style="text-align: right;">Page 182</p> <p>1 A. So I've tracked time multiple times, and I</p> <p>2 don't -- and because it's -- it's been several years,</p> <p>3 I don't really remember. I mean, I remember</p> <p>4 personally with my staff having it on the overhead and</p> <p>5 saying, "What do you think?" And constantly either</p> <p>6 looking it up or e-mailing somebody and saying, "What</p> <p>7 does this count as?" What -- you know, we did this.</p> <p>8 Does that count as this? Does that count -- how do we</p> <p>9 track that? There was a lot of resource that way. I</p> <p>10 don't -- I don't recall -- I don't recall there not</p> <p>11 being one. I don't recall there being one.</p> <p>12 Q. Within similar types of cases, is it fair</p> <p>13 to suggest that different cases have different needs?</p> <p>14 A. Sure, yeah.</p> <p>15 Q. So a -- a criminal -- or sorry. A felony A</p> <p>16 is not a felony A is not a felony A, said another way?</p> <p>17 A. Right.</p> <p>18 Q. In your personal experience, is it typical</p> <p>19 for a criminal defendant to only be charged with a</p> <p>20 single count or a single charge?</p> <p>21 A. It happens. You mean a -- one case with</p> <p>22 one count?</p> <p>23 Q. Uh-huh.</p> <p>24 A. It happens. I don't know what percentage</p> <p>25 that would be. It definitely happens in some cases,</p>	<p style="text-align: right;">Page 184</p> <p>1 of funds during a fiscal year and had to ask for</p> <p>2 supplemental funds from -- from upper management?</p> <p>3 A. I've definitely run out of funds, and I've</p> <p>4 definitely said, "Hey, there's this going on. What do</p> <p>5 you want me to do?"</p> <p>6 Q. And when that occurs, is it in a particular</p> <p>7 line item, such as by encumbrances or personnel?</p> <p>8 A. Yes. Well, usually -- well, I personnel</p> <p>9 is -- I don't have a personnel budget. That's</p> <p>10 completely Central.</p> <p>11 Q. Okay.</p> <p>12 A. So small encumbrances are called local</p> <p>13 encumbrances, and I've definitely had issues with</p> <p>14 that. There's certain amount of billing that comes</p> <p>15 out of travel. Attorneys, investigators, people</p> <p>16 having to drive. I feel like I've definitely gone</p> <p>17 over that. There are -- there are some things I have</p> <p>18 more control over. I mean, If someone has to drive to</p> <p>19 prison and depose people, and there's a lot of travel</p> <p>20 going on, I have less control over that than I do over</p> <p>21 ordering supplies, say, like -- or we will get the</p> <p>22 cheap pens. So -- but I -- I'm cognizant of it. I</p> <p>23 mean, I look at it, and January 1, we'll be halfway</p> <p>24 through the fiscal year, and I'll look at where we're</p> <p>25 at and how much money we have in a given -- and I -- I</p>

<p style="text-align: right;">Page 185</p> <p>1 notice when the new budget -- they send us a</p> <p>2 spreadsheet, and I always compare it to the old one,</p> <p>3 so I look at it, and I'm cognizant of areas where</p> <p>4 we've had problems.</p> <p>5 Q. Now, when you send the -- so your</p> <p>6 supplemental request -- and I'm unsure if that's the</p> <p>7 appropriate vernacular.</p> <p>8 A. Uh-huh.</p> <p>9 Q. But would that go to the controller, and</p> <p>10 she would figure out how to proceed from there, or how</p> <p>11 involved in you -- how involved are you in that</p> <p>12 budgetary process after you submit a supplementary --</p> <p>13 or supplementary request?</p> <p>14 A. Well, it -- it is not that formal of a</p> <p>15 process. It's more like, oh, I think I'm screwing up.</p> <p>16 How bad is this going to be? So I've never -- I don't</p> <p>17 submit a budget. It's more of an allowance to me, you</p> <p>18 know. They're like, here you go. Here's your chunk</p> <p>19 of money. Stay within that, and it's more of a, like,</p> <p>20 I don't -- I'm concerned -- in more of an alert to,</p> <p>21 like, why is our office spending more money than you</p> <p>22 thought historically would -- we would, and how will</p> <p>23 that go. But I -- there is -- I don't have -- I've</p> <p>24 never done a formal -- formal request for more funding</p> <p>25 to my office budget.</p>	<p style="text-align: right;">Page 187</p> <p>1 Q. -- when did you become aware that that</p> <p>2 particular section existed? Was it upon passage or --</p> <p>3 A. I -- I think so. I mean, it seemed to be</p> <p>4 part of that, which killed -- because at the time,</p> <p>5 people were certifying offices based on caseload,</p> <p>6 so -- and again, this is my understanding of it, and</p> <p>7 if legally, I'm wrong, I'm wrong. But they -- it</p> <p>8 seemed to pass to undercut that certification, because</p> <p>9 the certification was -- whole offices were certifying</p> <p>10 based on these numbers, no one in my office can take a</p> <p>11 case. In Chapter 600.063, clearly it says it can't be</p> <p>12 the entire office. I mean, it was clearly designed to</p> <p>13 sort of undercut that process.</p> <p>14 Q. So you had potentially knowledge of the</p> <p>15 passage from that -- and I believe that was the</p> <p>16 2012 --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- 2013 area up until present?</p> <p>19 A. Right.</p> <p>20 Q. Are you familiar with that statute?</p> <p>21 A. Pretty -- I mean, I can't recite it to you,</p> <p>22 but I'm fairly familiar.</p> <p>23 Q. Before the two motions that you filed under</p> <p>24 that Chapter --</p> <p>25 A. Uh-huh.</p>
<p style="text-align: right;">Page 186</p> <p>1 Q. How often would you say you run into that</p> <p>2 type of -- of snag, if you will, in terms of you</p> <p>3 looking at the -- your numbers and saying, I think we</p> <p>4 need a little bit more here? Is that an every year</p> <p>5 thing, or is that a --</p> <p>6 A. I would say I -- we pretty much exhaust our</p> <p>7 budget every year.</p> <p>8 Q. Okay.</p> <p>9 A. Well, and, I mean, I know centrally they</p> <p>10 watch it, so if I have an overflow, that will be gone</p> <p>11 the next budget year, but it won't be -- you know, it</p> <p>12 will go somewhere.</p> <p>13 Q. As the district defender, do you discern</p> <p>14 any type of difference between cases who are</p> <p>15 constitutionally mandated to take versus permissive</p> <p>16 ones?</p> <p>17 A. I'm not even sure what a -- what would be</p> <p>18 permissive. I'd like to know if there was an option.</p> <p>19 I -- I mean, we -- we take criminal cases we get</p> <p>20 appointed. At my office, I don't handle -- I mean,</p> <p>21 all we handle are crimes, so have you -- if there's a</p> <p>22 permissive one, let me know. I have no idea.</p> <p>23 Q. Speaking about the Chapter 600</p> <p>24 conference --</p> <p>25 A. Uh-huh.</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. -- had you -- have you -- had you ever</p> <p>2 utilized that chapter before or that particular</p> <p>3 section before?</p> <p>4 A. No. And honestly, I -- I'm only filing</p> <p>5 because the judges want me to. I don't think it's</p> <p>6 relevant for -- under Rule 4 at all, so I mean, I --</p> <p>7 one, I -- I think it's a trick statute that's not</p> <p>8 meant to really provide us any relief. And two, I</p> <p>9 don't think it encompasses our duties under Rule 4.</p> <p>10 The standard is ineffective assistance of counsel,</p> <p>11 which doesn't talk about the competence, diligence,</p> <p>12 and I think it's unconstitutional. I think it's -- I</p> <p>13 think that saying that only public defenders cannot --</p> <p>14 cannot put limits on their caseload is -- it's</p> <p>15 disgusting. I mean, to say that my license isn't any</p> <p>16 more worthwhile than yours; and somehow, there's a</p> <p>17 carved exception that allows me to not have caseload</p> <p>18 control, when every other lawyer has that -- so I'm</p> <p>19 aware of it, I think -- I don't know. Okay. I'll</p> <p>20 step off the soap box for you; okay?</p> <p>21 Q. Was that a -- a decision that you made to</p> <p>22 not foresee it under that statute, was that based upon</p> <p>23 your experience and your understanding of that</p> <p>24 statute, or were there conversations with other</p> <p>25 district defenders, with upper management concerning</p>

47 (Pages 185 to 188)

<p style="text-align: right;">Page 189</p> <p>1 whether or not you should you utilize that 2 particular -- 3 A. Well, Chapter 600 says it's based on 4 caseload standards. The assertion I made is based on 5 the rules of professional conduct and my lawyers 6 asserting -- plain reading, it didn't seem to apply. 7 I know the judges -- when I went around, the judges 8 were like, well, we think this is it. And I was like, 9 how does that encompass our concerns under Rule 4? It 10 doesn't meet them at all. So I think I probably had 11 multiple discussions with different -- I think -- I 12 think office-wide, one, it's -- it's -- having filed 13 under it, I didn't even know where to file. It just 14 says, "File something with the circuit court." Well, 15 is it a criminal case? Is it a civil case? It's -- 16 it's a very confusing statute. But where it is clear 17 is that it's based on caseload standards, which is not 18 what I -- I've been asserting under my Rule 4 19 concerns. 20 Q. And is that understanding what led you to 21 proceed the writing letters and communicating in other 22 ways outside of that statute? 23 A. Yes. And I will say, before I sent that 24 letter to Judge Torrence, I met with him personally 25 and said, "Hey, if you have other suggestions, let me</p>	<p style="text-align: right;">Page 191</p> <p>1 they don't have the same ethical obligations under 2 Rule 4 I do, and he -- that's what he -- he basically 3 was like, I -- I think you're full of it, and -- was 4 not all that concerned about my lawyers and their 5 ethics. Let's say that. Well, and then he was 6 annoyed. I can't believe Fisher said that. I can't 7 believe -- you know, he was just, you know, talking 8 out of his rear end basically. You know, basically 9 saying that, "No, Fisher said that on the record, and 10 I have to -- you guys are blowing it up into something 11 it shouldn't be, and I don't -- and now, I have to 12 deal with it." He did not offer solutions. Let's say 13 that. 14 Q. Have you in your career with the public 15 defender system ever been judicially determined to 16 have provided ineffective assistance of counsel? 17 A. No. 18 Q. Have any of your attorneys that have 19 worked -- that you have supervised, have they been 20 judicially determined to have provided ineffective 21 assistance of counsel? 22 A. Yes. 23 Q. Do you have a sense for how many? 24 A. No, I don't. I -- I don't know. I don't 25 have a sense for how many. I mean, I -- it's not</p>
<p style="text-align: right;">Page 190</p> <p>1 know." I didn't just send him a letter and be like, 2 "Hey, we don't take cases Monday." I met with him 3 probably a week prior in his chambers and had a 4 discussion to just say, "Hey, I'm -- I'm reaching 5 capacity." The only reason I wasn't at capacity is I 6 had three attorneys who had started the month before, 7 and were like, "No, we still -- we're still fine." 8 I'm like, "Great. We'll assign you" -- I mean, they 9 were getting every case because I had 30 lawyers who 10 said they couldn't take any. So I filed well after a 11 number of offices, because I couldn't 12 intellectually -- I couldn't honestly say that we were 13 at overload until every lawyer said they were there. 14 Q. What were some of those suggestions that 15 were made by the Court when you went in and had that 16 conversation? Was it, "Hey, write a letter and -- and 17 stop taking cases on" or -- 18 A. No. He didn't say much, other than he 19 said, "I think this is self-inflicted because you have 20 vertical representation. I think that's increasing 21 your caseload." And -- and Judge Torrence tells me 22 that he all the time. He didn't -- he didn't 23 practice -- he practiced in the eighties, and they 24 did -- had docket attorneys, and he felt like -- and 25 that's what the prosecutor's office does, even though</p>	<p style="text-align: right;">Page 192</p> <p>1 50 percent. I mean, it's probably one a year. 2 Q. And I apologize, I'm going to be jumping 3 all over the place. I'm going to be doing coverage to 4 complete -- 5 A. Sure. 6 Q. Earlier, you testified that forensic 7 testing was one of the areas where it was denied a 8 request for -- 9 A. Uh-huh. 10 Q. -- for an expert. Are there any other 11 examples of, I guess, categories that tend to get 12 rejected? 13 MS. SHIPMA: And you're talking about from 14 her office; right? 15 MR. RAMSEY: Yes. 16 A. Yeah. I don't know statewide, obviously. 17 Well, I've had some experts, specific experts that 18 people wanted that they were like, can you get 19 cheaper? Can you get -- I'm -- I can't think of any 20 right now. 21 Q. (By Mr. Ramsey) Now, turning to the 22 exhibits very briefly. I'm looking at exhibit that 23 Plaintiffs have marked as 2, and it's entitled, 24 "Duties under Missouri v. Frye?" 25 A. Uh-huh.</p>

48 (Pages 189 to 192)

<p style="text-align: right;">Page 193</p> <p>1 Q. Do you remember receiving this document, or 2 did you receive this document? 3 A. I assume I did. It's sent to me. Do I 4 remember receiving it? No. I mean, it was sent to me 5 in, I don't know, 2013; right? 6 Q. And presumably, the last time you saw this 7 was whenever you had presumably seen it before? 8 A. Yeah. Or I mean, I may have forwarded it 9 to the office. We may have discussed it at staff 10 meeting. I don't -- I mean, I haven't pulled it out 11 recently. 12 Q. Turning to Exhibit 3, what's been marked as 13 Plaintiff's Exhibit 3 -- 14 A. Uh-huh. 15 Q. -- it was already mentioned, but you did 16 not draft this letter, did you? 17 A. No. 18 Q. Were you involved in drafting this letter 19 at all? 20 A. No. 21 Q. Did you have any knowledge beforehand that 22 this letter was being drafted? 23 A. No. 24 Q. Turning to Plaintiff's Exhibit 4, did you 25 have any knowledge that this was being drafted?</p>	<p style="text-align: right;">Page 195</p> <p>1 guy who administrates it is -- he's officed in Saint 2 Louis, and I'm not remembering his name. I don't know 3 if it's in here. 4 MR. WILLIAMSON: Sherrer? 5 THE WITNESS: I'm sorry? 6 MR. WILLIAMSON: Sherrer? 7 THE WITNESS: Yeah. Michael Sherrer. 8 A. So Michael occasionally e-mails me just, 9 "How many cases have you sent? What stage are things 10 in?" Shook had their first two trials in the last 11 month, and I think I e-mailed him, you know, their 12 first trial went this way, something along those 13 lines. I don't -- I don't -- it's not -- there's not, 14 like, this corporate entity that reaches out. I mean, 15 the e-mail, itself, is from Joel Elmer, who's our 16 deputy director, so I -- Joel communicates on a 17 regular -- he sends me all his old E-notices almost 18 every other day so -- so I'm not sure -- I -- I guess 19 I don't know what you mean by, "communicate with 20 MCRC." 21 Q. (By Mr. Ramsey) Sure. I was unclear, but 22 I'll move on. 23 A. Sure. Okay. 24 Q. It's not a big -- 25 Shortly after, I believe it was the</p>
<p style="text-align: right;">Page 194</p> <p>1 A. No. 2 Q. Were you involved in the drafting process 3 for this? 4 A. No. 5 Q. Were you consulted in any other way in the 6 creation of that document? 7 A. I don't believe so. I mean, Pamela is 8 someone that I do know who I chat with occasionally, 9 but I don't have any recollection of talking to her 10 about this. 11 Q. Okay. Turning to Plaintiff's Exhibit 6, so 12 skipping over 5 -- 13 A. Uh-huh. 14 Q. -- you were not familiar with the Missouri 15 Coalition for the Right to Counsel's decision to draft 16 this letter, were you? 17 A. The -- this, I'm not as sure. I mean, 18 there was a point when Joel sent something out and 19 asked for input, and I don't know -- honestly, I don't 20 know if this is it or not. But it had to do with 21 counsel. It may have had to do with this letter; it 22 may not have. 23 Q. Have you had any other conversations with 24 MCRC? 25 A. Well, MCRC really isn't -- there's -- the</p>	<p style="text-align: right;">Page 196</p> <p>1 Hinkebein decision -- 2 A. Uh-huh. 3 Q. -- where the district defenders met and I 4 believe it was some type of a conference -- 5 A. Uh-huh. 6 Q. -- or a conversation? 7 Did I understand your testimony correctly 8 to suggest that central office didn't provide a -- a 9 list of, "Here are the three or four different things 10 you can do to manage your -- your caseload or workload 11 concerns"? 12 A. I wouldn't say -- I mean, they -- I think 13 there was a presentation about what are the coverage 14 of a Rule 4, what are the caseloads, stuff that talks, 15 I -- there wasn't a directive that, you have to do 16 these things and these things. There was -- there's, 17 like, a sample Bar complaint against Michael Barrett 18 if -- you know, if people wanted to do that, but it 19 wasn't -- there wasn't a directive. In 2012, when 20 people were being certified, there was a directive of 21 how you were supposed to do it. You were supposed to 22 meet with judges in a certain way. You're supposed to 23 do these things. Your numbers had to be this level. 24 There wasn't anything like that. But was it a large 25 part of discussions at the management conference?</p>

49 (Pages 193 to 196)

<p style="text-align: right;">Page 197</p> <p>1 Certainly.</p> <p>2 Q. And that discussion was amongst the</p> <p>3 district defenders --</p> <p>4 A. Uh-huh. And --</p> <p>5 Q. Or was it across --</p> <p>6 A. Yeah. There were -- I -- there were</p> <p>7 presentations on it. There were district defenders</p> <p>8 that talked about it. We had small groups. I mean,</p> <p>9 people were very worried and upset about it. People</p> <p>10 were very concerned, and I was -- I mean, I was --</p> <p>11 had -- before I went to the conference, I was</p> <p>12 getting -- I had multiple e-mails from my lawyers</p> <p>13 refusing cases, so it wasn't -- there was no way it</p> <p>14 wasn't going to be talked about.</p> <p>15 Q. Again, I apologize for jumping around. I'm</p> <p>16 focusing on the second Chapter 600 motion that was</p> <p>17 filed on your behalf or that you filed.</p> <p>18 A. Uh-huh.</p> <p>19 Q. After that was denied, it's my</p> <p>20 understanding of your testimony that you did not</p> <p>21 appeal that particular denial; is that correct?</p> <p>22 A. I have not. It was just denied a couple</p> <p>23 weeks ago, but yes.</p> <p>24 MR. RAMSEY: Okay. I believe that's it for</p> <p>25 me.</p>	<p style="text-align: right;">Page 199</p> <p>1 A. The National Association of Criminal</p> <p>2 Defense Lawyers.</p> <p>3 Q. Okay. All right. I just wanted to make</p> <p>4 sure that --</p> <p>5 A. Yes, thank you.</p> <p>6 Q. -- we had that on the record, because I</p> <p>7 knew you were forgetting that.</p> <p>8 A. I was.</p> <p>9 Q. And just -- do you know -- and if you don't</p> <p>10 know this, that's fine. I just want to ask. Do you</p> <p>11 know if there is -- if -- if failure to be -- to act</p> <p>12 diligently is the same as ineffective assistance of</p> <p>13 counsel? Are those the same standards?</p> <p>14 A. My understanding is they're very different</p> <p>15 standards.</p> <p>16 Q. And is that the same for not communicating</p> <p>17 regularly with your client under the ethics rules, is</p> <p>18 that the same standard as ineffective assistance of</p> <p>19 counsel?</p> <p>20 A. No. They're different standard.</p> <p>21 Q. Okay. Thank you.</p> <p>22 (Petsch Exhibit 10 was marked for</p> <p>23 identification.)</p> <p>24 Q. Now, I want to hand you what's been marked</p> <p>25 Exhibit 10. Can you tell me what that is?</p>
<p style="text-align: right;">Page 198</p> <p>1 MR. WILLIAMSON: I have two follow-ups.</p> <p>2 Did you want --</p> <p>3 MS. SHIPMA: I have some follow-ups too.</p> <p>4 MR. WILLIAMSON: Go.</p> <p>5 MS. SHIPMA: But I need to get -- I had</p> <p>6 Jillian -- or Gillian print out some documents for</p> <p>7 me --</p> <p>8 MR. WILLIAMSON: Oh, okay.</p> <p>9 MS. SHIPMA: -- for mine, so do you want</p> <p>10 to -- I'll just go off the record and go get those.</p> <p>11 MR. WILLIAMSON: Sure. That's fine.</p> <p>12 VIDEOGRAPHER: Off the record, 1:49 p.m.</p> <p>13 (A brief recess was taken.)</p> <p>14 VIDEOGRAPHER: On the record, 1:52 p.m.</p> <p>15 EXAMINATION</p> <p>16 BY MS. SHIPMA:</p> <p>17 Q. Okay. Ruth, I have just a few follow-up</p> <p>18 questions for you.</p> <p>19 When Mr. Ramsey was asking you about</p> <p>20 organizations you've communicated with, I -- I -- did</p> <p>21 you communicate with NACDL, N-A-C-D-L?</p> <p>22 A. I did. Yes, I did. Well, Judge O'Malley</p> <p>23 asked me to participate a conference call, which I</p> <p>24 did. Sorry.</p> <p>25 Q. And do you know what N-A-C-D-L stands for?</p>	<p style="text-align: right;">Page 200</p> <p>1 A. It's the first page of the Public Defender</p> <p>2 18 CSR10-3.010.</p> <p>3 Q. Flip it over.</p> <p>4 A. Oh.</p> <p>5 Q. It's on the back.</p> <p>6 A. Thank you. That makes more sense.</p> <p>7 Guidelines for Determination of Indigence.</p> <p>8 Q. And are you familiar with those?</p> <p>9 A. Yeah. Again, I can't recite them, but if I</p> <p>10 go back to them -- and they're used regularly in my</p> <p>11 office.</p> <p>12 Q. And who promulgates these? Are these</p> <p>13 created by your office?</p> <p>14 A. No. Not by my office.</p> <p>15 Q. Do you know who creates those?</p> <p>16 A. I assume -- I guess that -- in my head, it</p> <p>17 was the legislature. I don't know if the commission</p> <p>18 does that or not.</p> <p>19 Q. Okay. So if you don't know the answer to</p> <p>20 that --</p> <p>21 A. I don't.</p> <p>22 Q. -- that's fine.</p> <p>23 Okay. But you have seen those before?</p> <p>24 A. Yes.</p> <p>25 Q. And you're familiar with those?</p>

50 (Pages 197 to 200)

<p style="text-align: right;">Page 201</p> <p>1 A. Yes.</p> <p>2 Q. And do those contain, as far as you are</p> <p>3 aware, the factors that are to be considered in</p> <p>4 determining indigency?</p> <p>5 A. Yes.</p> <p>6 (Petsch Exhibit 11 was marked for</p> <p>7 identification.)</p> <p>8 Q. Okay. All right. So now, I want to hand</p> <p>9 you Exhibit 11, and I believe the sticker is on the</p> <p>10 front page of that one --</p> <p>11 A. Okay.</p> <p>12 Q. -- so you don't have to turn it over. Can</p> <p>13 you tell me what that is?</p> <p>14 A. This is an application for public defender</p> <p>15 services and the promise to pay.</p> <p>16 Q. And when you were talking earlier about</p> <p>17 determining indigency and making that determination in</p> <p>18 court or maybe it comes back to the office, is this</p> <p>19 the form that you were referring to?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Actually, I do want you to look at</p> <p>22 the back page of this document for just a moment. Do</p> <p>23 you see the section that's entitled "Acknowledgement</p> <p>24 and Promise to Pay"?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 203</p> <p>1 (Petsch Exhibit 12 was marked for</p> <p>2 identification.)</p> <p>3 Q. Okay. Now, I'm going to hand you what's</p> <p>4 been marked Exhibit 12. Can you tell me what that is,</p> <p>5 please?</p> <p>6 A. Instructions for determining indigence.</p> <p>7 Q. Have you ever seen this document before?</p> <p>8 A. I have.</p> <p>9 Q. And what is this document used for?</p> <p>10 A. It's basically instructions on how to</p> <p>11 figure out whether someone -- well, to take an</p> <p>12 application.</p> <p>13 Q. And --</p> <p>14 A. Or assistance in doing that.</p> <p>15 Q. Is this something that's used internally</p> <p>16 rather than something that's given to applicants?</p> <p>17 A. I don't think -- yeah. I don't -- I -- we</p> <p>18 do not give this to applicants.</p> <p>19 Q. Okay. Look at the second paragraph. Can</p> <p>20 you read that second paragraph to me?</p> <p>21 A. "If the applicant's income level is at or</p> <p>22 below federal poverty guidelines, there is a</p> <p>23 presumption of eligibility unless other factors such</p> <p>24 as assets indicate the ability to hire a private</p> <p>25 attorney."</p>
<p style="text-align: right;">Page 202</p> <p>1 Q. And can you read the first sentence of that</p> <p>2 to me?</p> <p>3 A. "I understand that lying on this</p> <p>4 application constitutes a crime."</p> <p>5 Q. And is there a place for the applicant's</p> <p>6 signature and date below that?</p> <p>7 A. Yes.</p> <p>8 Q. So applicants know when they are filling</p> <p>9 this out that if they don't give correct information,</p> <p>10 that could result in their being further charged; is</p> <p>11 that correct?</p> <p>12 A. Yes. They should know.</p> <p>13 Q. At least they're put on notice of that?</p> <p>14 A. Right.</p> <p>15 Q. And do you believe that the people who are</p> <p>16 going over these applications with the defendants</p> <p>17 point that out to them?</p> <p>18 A. Yes. Most of time, they read it to them,</p> <p>19 and then have them -- I mean, a lot of our clients are</p> <p>20 in cuffs, so they read the entire application and fill</p> <p>21 in the answers, and then have them sign.</p> <p>22 Q. Okay.</p> <p>23 A. They allow them to review it. They don't</p> <p>24 fill it out in secret or anything, but a lot of it's</p> <p>25 read.</p>	<p style="text-align: right;">Page 204</p> <p>1 Q. And I apologize. That was my fault. I</p> <p>2 didn't realize that the paragraph I was intending for</p> <p>3 you to read doesn't really have a number on it, but it</p> <p>4 is the second -- if you look --</p> <p>5 A. Oh, the second -- oh, not number 2. Sure.</p> <p>6 Q. The first paragraph, not number 2. But the</p> <p>7 second paragraph.</p> <p>8 A. "If the applicant is unemployed and</p> <p>9 receiving public assistance, he or she is eligible for</p> <p>10 services. No further inquiry need be made. This is</p> <p>11 true even if the applicant has posted bond."</p> <p>12 Q. So that's a bright line; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. Now, let's look at paragraph number 2.</p> <p>15 A. Okay.</p> <p>16 Q. The one that's numbered 2 --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- that you read to me before. It -- does</p> <p>19 that implicate a bright line?</p> <p>20 A. Well, it says other factors -- to me, it</p> <p>21 wouldn't, but I mean, it tells you what factors you</p> <p>22 can consider. If -- I don't -- I guess I don't --</p> <p>23 if -- if you indicate -- call that a bright line or</p> <p>24 not.</p> <p>25 Q. Okay. And then look at the paragraph</p>

51 (Pages 201 to 204)

<p style="text-align: right;">Page 205</p> <p>1 numbered 3. Can you read that?</p> <p>2 A. "An income level above federal poverty</p> <p>3 guidelines gives rise to a presumption of</p> <p>4 ineligibility" --</p> <p>5 (Reporter admonishment.)</p> <p>6 THE WITNESS: Sorry.</p> <p>7 A. "An income level above federal poverty</p> <p>8 guidelines gives rise to a presumption of</p> <p>9 ineligibility unless individual circumstances such as</p> <p>10 debt level indicates an inability to hire a private</p> <p>11 attorney."</p> <p>12 Q. (By Ms. Shipma) Okay. And I believe that</p> <p>13 that is also -- as I'm understanding these</p> <p>14 instructions, the only presumption, the only bright</p> <p>15 line presumption --</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- is if you're unemployed and receiving</p> <p>18 some sort of public assistance, you're automatically</p> <p>19 eligible for services?</p> <p>20 A. Right.</p> <p>21 Q. In all other case, even if you're at the</p> <p>22 federal -- or even if you're at or below the poverty</p> <p>23 guidelines, you're not automatically presumed eligible</p> <p>24 for services. You have to look at these other</p> <p>25 factors; is that correct?</p>	<p style="text-align: right;">Page 207</p> <p>1 Defendant's -- or Plaintiff's 12. Where did this</p> <p>2 document come from?</p> <p>3 A. Well, I think this was sent out, if I</p> <p>4 recall correctly -- they update the application, and</p> <p>5 they've updated it many times frequently, as well as</p> <p>6 how it should be looked at. I think it's been updated</p> <p>7 twice in the last two years. So I think it was sent</p> <p>8 out as an assistant, because it -- because some</p> <p>9 things -- there were other bright line tests that</p> <p>10 were -- like, it used to be if you maid made a \$5,000</p> <p>11 bond, you were ineligible. It didn't -- it didn't</p> <p>12 matter how poor you were or things like that. So with</p> <p>13 that, there's often sort of assistive documents that</p> <p>14 are sent out to help -- like, my legal assistants who</p> <p>15 do the bulk of filling this out, to help them come to</p> <p>16 the right conclusions, because I still have lawyers</p> <p>17 who I'm like, no, \$5,000 doesn't -- that's not a --</p> <p>18 that's not a consideration any more, but it was in our</p> <p>19 office probably for ten years. And the private</p> <p>20 attorney that we talked about, like, you -- we used to</p> <p>21 automatically disqualify people if they had a private</p> <p>22 attorney, and then that changed.</p> <p>23 Q. And this is coming from central office?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And then just the second question</p>
<p style="text-align: right;">Page 206</p> <p>1 A. Right.</p> <p>2 Q. In your opinion, with your office, do your</p> <p>3 attorneys represent many people who aren't eligible</p> <p>4 for services who have the ability to hire private</p> <p>5 attorneys?</p> <p>6 A. No.</p> <p>7 Q. So there isn't this rash of -- of</p> <p>8 eligible -- or of -- of people who are able to hire</p> <p>9 attorneys snookering the system and getting our</p> <p>10 attorneys all bogged down in all their cases; is that</p> <p>11 correct?</p> <p>12 A. That's not my understanding. I mean, most</p> <p>13 of our clients think it's -- they don't -- they think</p> <p>14 we're really bad lawyers, so if they have the ability</p> <p>15 to not have us represent them, they try very hard to</p> <p>16 get out of it.</p> <p>17 MS. SHIPMA: Okay. That's all I have.</p> <p>18 MR. RAMSEY: I have a very few brief</p> <p>19 follow-ups, if I can.</p> <p>20 MR. WILLIAMSON: I do, but go ahead.</p> <p>21 MR. RAMSEY: I can wait.</p> <p>22 MR. WILLIAMSON: No. Go ahead.</p> <p>23 EXAMINATION</p> <p>24 BY MR. RAMSEY:</p> <p>25 Q. Very briefly, questions concerning</p>	<p style="text-align: right;">Page 208</p> <p>1 and my last question, and I'll be done.</p> <p>2 A. Uh-huh.</p> <p>3 Q. Concerning how you would know the financial</p> <p>4 affluence of a particular defendant, how would know if</p> <p>5 there's not a control mechanism after the fact, or is</p> <p>6 that just your sense of -- of who's coming in and out?</p> <p>7 A. Yeah. I mean, based on -- I mean, we have</p> <p>8 a number of people who are homeless who don't have</p> <p>9 phones that we can't contact. I guess they could lie</p> <p>10 about it. But we also have people who clearly haven't</p> <p>11 showered, who are missing teeth, who -- you know, I</p> <p>12 mean, we have a lot of people who, if you had funds,</p> <p>13 and you had the kind of funds that you could hold</p> <p>14 an -- have an attorney, you probably wouldn't be</p> <p>15 living your the life the way you are. You wouldn't be</p> <p>16 showing up for court. So I mean, there's some extreme</p> <p>17 poverty that people just wear.</p> <p>18 MR. RAMSEY: I'm done.</p> <p>19 MR. WILLIAMSON: Fewer than five minutes.</p> <p>20 EXAMINATION</p> <p>21 BY MR. WILLIAMSON:</p> <p>22 Q. If the public defender's office determines</p> <p>23 that a person is not eligible for its services, can</p> <p>24 that decision be appealed by the defendant?</p> <p>25 A. Yes.</p>

52 (Pages 205 to 208)

<p style="text-align: right;">Page 209</p> <p>1 Q. To the trial judge?</p> <p>2 A. Or to the -- I mean, the associates.</p> <p>3 Any -- really, any judge they're in front of, and</p> <p>4 it -- if they want us, it normally is.</p> <p>5 Q. And is that the context in which judges end</p> <p>6 up appointing you, even to cases where you've</p> <p>7 determined that the person is not eligible?</p> <p>8 A. Yes.</p> <p>9 Q. Do judges make that determination even when</p> <p>10 there's not a formal appeal filed by the defendant?</p> <p>11 A. Well, they -- they almost never file</p> <p>12 anything. They -- they walk up to the bunch, "Do you</p> <p>13 have a lawyer?" "No." "Did you apply for the public</p> <p>14 defender?" "I did, but they said I don't qualify,"</p> <p>15 and then a lot of times, the judges go right into,</p> <p>16 "Well, how much money do you make?" "Why can't you</p> <p>17 afford someone?" It's almost always fewer than ten</p> <p>18 questions; a lot of times, fewer than five questions.</p> <p>19 And they almost always appoint us anyway. So I know</p> <p>20 the last time we were audited, the auditors asked me</p> <p>21 over and over, "Why did the judge even appoint you?"</p> <p>22 And I'm like, "I am not the judge. I have no idea."</p> <p>23 But we get appointed a lot.</p> <p>24 Q. And do you ever find or do your lawyers</p> <p>25 ever find themselves in adversarial proceedings</p>	<p style="text-align: right;">Page 211</p> <p>1 now, I'm not ready to try the -- but I don't -- I</p> <p>2 don't know that we've ever -- I -- I'm sure we have.</p> <p>3 I just -- in recent history, I don't know the last</p> <p>4 time we writted a judge on that.</p> <p>5 Q. Final thing, you testified earlier that</p> <p>6 you've never had a request for a deposition denied?</p> <p>7 A. I don't -- well, again, tweaked -- me,</p> <p>8 personally, have a request for a deposition --</p> <p>9 Q. So let's start there.</p> <p>10 A. I don't -- no. I don't think I've ever</p> <p>11 personally had a request for a deposition denied.</p> <p>12 Q. And -- and you have never outright denied</p> <p>13 an applicant -- or a request from one of your</p> <p>14 attorneys for a deposition?</p> <p>15 A. No. I mean, I've asked them to edit it,</p> <p>16 I've asked them to -- more information, to change</p> <p>17 things, but I've -- I've never just said, "denied"</p> <p>18 without -- I don't -- the only time -- the only</p> <p>19 denials I have are usually if they have a request that</p> <p>20 I've asked them to edit, because I'll have some</p> <p>21 denials come up in the computer, but it's generally</p> <p>22 because they then pled the case, didn't spend any</p> <p>23 money, and they did -- they didn't make the edits in a</p> <p>24 timely manner, so now, it's moved because the case is</p> <p>25 done, and I'll deny it. But I haven't -- I don't -- I</p>
<p style="text-align: right;">Page 210</p> <p>1 against indigent defendants who they then end up</p> <p>2 representing?</p> <p>3 A. It's definitely happened. I mean, I --</p> <p>4 personally, I'd move to withdraw. I was allowed to</p> <p>5 withdraw on a murder where -- we had two murder cases</p> <p>6 he bonded, and I ended up on the stand with him</p> <p>7 questioning me for an hour about policies. So it's</p> <p>8 certainly happened, and it's certainly bad for the</p> <p>9 relationship. But less so -- and I mean, I would say</p> <p>10 that our guidelines -- we have fewer bright line rules</p> <p>11 than we used to, and our guidelines don't -- you know,</p> <p>12 the bond isn't a rule any more. The private attorney</p> <p>13 isn't a rule any more, and those things probably</p> <p>14 provided more of the -- and truth be told, it -- you</p> <p>15 can say, "I have this," but ultimately, the judge can</p> <p>16 appoint you anyway. Unless you're going appeal that</p> <p>17 appointment or you're going to writ the judge on it,</p> <p>18 there's not much we can do.</p> <p>19 Q. And does your office ever take that route</p> <p>20 of appealing the judge?</p> <p>21 A. We writted once. We had an attorney who I</p> <p>22 think the Friday before trial hired a private</p> <p>23 attorney, and they ordered us to stay on, and we</p> <p>24 writted the judge on that, and we were successful in</p> <p>25 that writ. Mostly because my lawyer is like, I'm --</p>	<p style="text-align: right;">Page 212</p> <p>1 have no memory of ever just outright denying a</p> <p>2 deposition request.</p> <p>3 Q. And you -- and you've -- have personally</p> <p>4 never been denied an expert request either?</p> <p>5 A. Not -- no. Not to my -- I don't ever</p> <p>6 remember that.</p> <p>7 Q. And to your knowledge, none of the lawyers</p> <p>8 in your office have ever been denied an expert?</p> <p>9 A. Well, they've had requests denied. I</p> <p>10 mentioned that forensic expert. And again, I'm --</p> <p>11 things have been denied. It's usually due to cost.</p> <p>12 Now, the question is, did they then not get another</p> <p>13 expert that was affordable or something along those</p> <p>14 lines? And that, I don't know. If it's a flat --</p> <p>15 I -- I assume you're saying, flat-out denial; now, I</p> <p>16 don't have an expert.</p> <p>17 Q. Right.</p> <p>18 A. That, I'm not as clear on.</p> <p>19 Q. Okay. And is it fair to say that -- well,</p> <p>20 strike that.</p> <p>21 You've also testified here today that you</p> <p>22 believe that your office ideally should be retaining</p> <p>23 many more experts than it actually does?</p> <p>24 A. Yes.</p> <p>25 Q. You also testified that your lawyers should</p>

53 (Pages 209 to 212)

<p style="text-align: right;">Page 213</p> <p>1 be taking many more depositions than they do?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So is it fair to say to that there</p> <p>4 are certain -- there are a significant number of</p> <p>5 requests for experts that simply -- that would be</p> <p>6 appropriate, but that are just not made?</p> <p>7 A. Right.</p> <p>8 Q. And is it also true that there are a</p> <p>9 significant number of requests for depositions that</p> <p>10 would be appropriate, but are not made?</p> <p>11 A. Right.</p> <p>12 MR. WILLIAMSON: That's all I've got.</p> <p>13 VIDEOGRAPHER: Off the record. 2:08 p.m.</p> <p>14 MS. SHIPMA: Read and sign.</p> <p>15 (Deposition concluded at 2:08 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 215</p> <p>1 Alaris Litigation Services</p> <p>2 1608 Locust Street</p> <p>3 Kansas City, Missouri 64108</p> <p>4 December 19, 2017</p> <p>5</p> <p>6 Ms. Jacqueline Shipma</p> <p>7 MISSOURI STATE PUBLIC DEFENDER'S OFFICE</p> <p>8 1000 West Nifong</p> <p>9 Building 7, Suite 100</p> <p>10 Columbia, Missouri 65203</p> <p>11 In Re: SHONDEL CHURCH, et al., v.</p> <p>12 STATE OF MISSOURI, et al.</p> <p>13</p> <p>14 Dear Ms. Shipma:</p> <p>15</p> <p>16 Please find enclosed your copy of the deposition of</p> <p>17 RUTH PETSCH taken on December 5, 2017, in the</p> <p>18 above-referenced case. Also enclosed is the original</p> <p>19 signature page and errata sheet.</p> <p>20 Please have the witness read your copy of the</p> <p>21 transcript, indicate any changes and/or corrections</p> <p>22 desired on the errata sheet, and sign the signature</p> <p>23 page before a notary public.</p> <p>24</p> <p>25 Please return the errata sheet and notarized signature</p> <p>page to Alaris Litigation Services for filing prior to</p> <p>trial date.</p> <p>Thank you for your attention to this matter.</p> <p>Sincerely,</p> <p>Emily S. Hughes, RPR, CRR, MO CCR #1353</p> <p>Enclosures</p> <p>cc: Mr. Jason D. Williamson</p>
<p style="text-align: right;">Page 214</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3 I, Emily S. Hughes, a Certified Court</p> <p>4 Reporter within and for the State of Missouri, do</p> <p>5 hereby certify that the witness whose testimony</p> <p>6 appears in the foregoing deposition was duly sworn by</p> <p>7 me; that the testimony of said witness was taken by me</p> <p>8 to the best of my ability and thereafter reduced to</p> <p>9 typewriting under my direction; that I am neither</p> <p>10 counsel for, related to, nor employed by any of the</p> <p>11 parties to the action in which this deposition was</p> <p>12 taken, and further that I am not a relative or</p> <p>13 employee of any attorney or counsel employed by the</p> <p>14 parties thereto, nor financially or otherwise</p> <p>15 interested in the outcome of the action.</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 Emily S. Hughes, RPR, CRR, CCR #1353</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 216</p> <p>1 STATE OF)</p> <p>2)</p> <p>3 COUNTY OF)</p> <p>4</p> <p>5 I, RUTH PETSCH, do hereby certify:</p> <p>6 That I have read the foregoing deposition;</p> <p>7 That I have made such changes in form and/or</p> <p>8 substance to the within deposition as might be</p> <p>9 necessary to render the same true and correct;</p> <p>10 That having made such changes thereon, I hereby</p> <p>11 subscribe my name to the deposition.</p> <p>12 I declare under penalty of perjury that the</p> <p>13 foregoing is true and correct.</p> <p>14</p> <p>15 RUTH PETSCH</p> <p>16</p> <p>17 Executed this day of ,</p> <p>18 2017, at .</p> <p>19</p> <p>20 Notary Public:</p> <p>21 My Commission Expires:</p> <p>22</p> <p>23 Signature page to: Ms. Jacqueline Shipma</p> <p>24</p> <p>25</p>

54 (Pages 213 to 216)

Page 217	
1	WITNESS ERRATA SHEET
2	Witness Name: RUTH PETSCH
3	Case Name: SHONDEL CHURCH, et al., v.
4	STATE OF MISSOURI, et al.
5	Date Taken: DECEMBER 5, 2017
6	Page # _____ Line # _____
7	Should Read: _____
8	Reason for Change: _____
9	Page # _____ Line # _____
10	Should Read: _____
11	Reason for Change: _____
12	Page # _____ Line # _____
13	Should Read: _____
14	Reason for Change: _____
15	Page # _____ Line # _____
16	Should Read: _____
17	Reason for Change: _____
18	Page # _____ Line # _____
19	Should Read: _____
20	Reason for Change: _____
21	Page # _____ Line # _____
22	Should Read: _____
23	Reason for Change: _____
24	Witness Signature: _____
25	

A	achievable	112:21	84:17 87:25	answered 117:13
a.m 6:9,12	146:16	ADP 26:2	88:1 206:20	181:8
58:16,18 95:7	acknowledge	adult 82:10	206:22	answering 8:13
95:9	128:15	104:13 105:21	air 33:18 80:10	156:10
ABA 176:10	Acknowledge...	advanced 66:18	al 1:3,6 4:3,6,17	answers 133:11
abandoned	201:23	66:18	4:18 6:13,14	133:11 202:21
138:21	ACLU 5:4 6:24	adversarial	215:10,10	Anthony 120:19
ability 7:23	151:17	209:25	217:2,2	anticipating
21:19 85:8	act 199:11	adverse 95:16	Alan 5:10	21:12
92:3 129:12	action 134:18	adversely	Alaris 5:22 6:21	antiquated
145:11,12	214:11,15	84:25	215:1,18	91:22
203:24 206:4	actions 138:15	advice 37:15	alarmed 70:23	anybody 37:15
206:14 214:8	actively 98:21	99:13	alert 185:20	anymore 105:8
able 23:22 27:2	acts 18:20	advise 94:23	alleged 107:1	anyway 62:18
51:21 54:13,18	actual 177:17	95:14	allocate 36:7	107:3 134:1
61:6,7 67:6	acumen 23:8	advising 85:16	allocates 17:19	155:17 209:19
77:6,8 85:5	adamant 118:4	advocate 34:16	allow 8:18	210:16
100:25 154:2	118:14	34:19	202:23	AP 26:21
155:2 169:4	add 24:3 33:20	advocating	allowance	APD 25:1,12,15
206:8	91:17 181:16	101:10	185:17	25:16,18,21,21
above-refere...	added 60:14,15	affidavits 9:3	allowed 135:13	26:4,6,21,22
215:13	60:18 91:19	affirmatively	155:14 210:4	27:10 29:1
absolutely 19:21	127:11	90:13	allows 188:17	33:11
93:14,19	additional 22:2	affluence 208:4	alluded 43:11	APDs 25:12
149:24 150:16	40:1,21 42:17	afford 148:10,12	161:6	apologize
absorb 67:14	92:5 94:13	152:9 209:17	alternative 75:7	100:11 166:18
108:5 134:8	165:21,24	affordable	alternatives	192:2 197:15
ac 74:6	adequate 66:12	212:13	109:15 110:19	204:1
ACA 183:13	84:2	afraid 20:24	111:6	app 155:9
accept 56:8	adequately	22:5 34:10	American 4:11	appeal 102:23
128:4 143:20	83:25 85:1	37:14,15	6:18	102:25 103:20
159:24	94:23 113:3	afternoon	amount 16:12	103:24 155:14
acceptance	administering	145:25 146:1	31:13 36:4	197:21 209:10
157:9	129:2	age 7:8	37:2 46:7	210:16
accepted 160:2	administrates	aghost 156:9	54:11,12 88:12	appealed
accepting 97:6	195:1	ago 45:12 75:7	135:15 150:17	208:24
accepts 161:1	administrative	108:22 111:24	167:3 184:14	appealing
access 75:24	18:19,23	149:22 197:23	amounts 45:13	210:20
125:22	42:20,23 43:2	agree 123:19	and/or 2:17	appeals 14:3,10
accessible 92:2	43:12 179:23	124:18	125:4 215:15	131:2 136:18
accompanies	180:1	agreeable	216:7	appear 51:8
103:10	admissions	90:22	animosity 120:9	183:4
account 35:7	53:7	agreed 6:1	annoyed 191:6	appearance
128:21 155:5,5	admit 52:14,23	104:7 131:12	annual 165:16	44:24 46:16
accused 138:9	admonishment	agreement	answer 7:22	50:5,17 51:2,8
ACH 183:12	205:5	47:18	8:5,15,19,20	51:18,19 52:9
	adolescent	ahead 75:17	90:13 200:19	52:12 53:4,9

97:17	160:11 186:20	areas 54:21 71:3	aspect 70:10,16	10:2,3 16:19
appearances	209:23	166:15 185:3	assault 148:16	17:14 18:6,20
51:22 52:4	appointing	192:7	asserted 118:10	42:15,21 89:5
appeared 117:5	53:24 127:8	argument 83:12	134:24	152:19 165:17
144:15	128:16 129:16	83:14,15	asserting 120:4	166:17 207:8
appearing 5:3,8	135:3 138:17	arguments	189:6,18	assistants 15:19
5:14 139:7	156:13 209:6	75:14 108:10	assertion 189:4	15:22 17:9,21
appears 131:12	appointment	110:14 121:3	assertions 118:1	18:17,21,22
214:6	136:1 210:17	141:5	assessing	42:3,4,12
appellate 14:11	appointments	arms 119:15	34:23	207:14
103:1 104:2	55:16 56:8	Army 75:6	assessment	assistive 207:13
113:18,19	108:1 126:18	arraigned	45:18,22	associate 48:12
applicant 204:8	129:10,13	49:22	100:22 101:9	49:19
204:11 211:13	appoints 107:3	arraignment	assets 153:12,16	associates
applicant's	160:15	44:24 45:3,4	155:5 158:1	209:2
202:5 203:21	appraisal 178:10	50:14 57:19	161:4,14,14	Association
applicants 157:1	appreciate	57:23 58:5	203:24	199:1
202:8 203:16	172:6	71:7 176:1	assign 31:22	assume 85:22
203:18	approach 56:21	arraignments	53:22 107:14	91:17 100:8
application 3:3	appropriate	49:24 57:20	107:16 118:5	102:13 116:12
15:25 152:24	78:18 79:22	arrange 43:8	129:14 133:23	117:7 125:10
152:25 153:2	111:6 114:25	58:9	176:9 190:8	193:3 200:16
153:20 154:21	185:7 213:6,10	arranged	assigned 16:9	212:15
159:21 160:16	approval 157:8	144:20	17:10 18:25	assumed 138:6
160:18,25	173:1,22	arrest 44:20,21	23:11 32:4	assuming 88:9
201:14 202:4	approve 29:5	arrested 44:25	41:16,20 51:15	125:8
202:20	33:24 35:18	45:1	105:20,21	attach 141:9
203:12 207:4	35:21 36:2	ascertain 154:18	131:19 142:21	attached 3:6
applications	approved 34:13	ascertains	162:13 176:3	141:20,25
16:4 128:2	36:2 73:11	158:5	assigner 21:17	attend 23:25
155:8,12 157:4	79:2	aside 18:16 57:6	assigning 15:7	24:22 25:7
202:16	approver 170:4	81:1 94:14,20	21:17 139:2,5	99:5
apply 154:13,20	approves 73:12	112:15 131:3	140:10 142:12	attending 101:13
189:6 209:13	approving 29:3	133:10 144:13	144:1	attention 215:19
appoint 55:15	approximate	145:2 163:17	assignment	attentive 51:6
128:17 134:23	177:10	172:12	2:18 130:3	attorney 5:10
134:25 135:1	approximately	asked 45:21	142:5	8:3 12:6,19
155:17 156:12	43:20 132:2	53:18 55:23	assignments	14:24 15:1,3
209:19,21	April 131:25	111:25 133:1	32:4	16:18 22:10,16
210:16	archived 155:9	140:13,13	assist 43:9	26:4,6 27:6
appointed 53:8	arduous 180:24	152:22 174:19	74:24	30:17,17 33:23
53:13 57:1,2	area 10:11,13,18	194:19 198:23	assistance 17:13	41:13,16,19
96:9 97:12,14	11:9,11,12	209:20 211:15	188:10 191:16	51:15,24 52:3
97:15 126:16	105:12,19	211:16,20	191:21 199:12	54:4,23 55:6
127:4 135:14	124:16,21	asking 31:1	199:18 203:14	57:23 58:3,8
139:9 145:7	130:24,25	81:10,10 117:12	204:9 205:18	61:20 62:7
155:12 156:20	166:22 187:18	170:10 198:19	assistant 9:25	64:10 67:10

70:2 74:12	94:22 95:1	83:13 95:13,18	118:6 139:3	75:8 83:14,23
83:10 94:6,15	99:5 100:25	95:21 96:3	143:17 148:5	84:2 85:3
94:20 101:3	101:18,19,24	102:6,10 110:2	151:25 152:8	118:23 124:8
102:12 104:2	104:17 108:7,7	110:22 116:25	196:17	134:20 135:6
105:14 112:14	110:7,19,22	119:19 121:13	bare 138:5	135:19 139:4
134:1,22	112:9 113:3	123:22,25	Barrett 196:17	144:7 162:1,23
144:19 152:21	114:24 117:19	124:2 131:6	base 28:12,14	168:10 178:20
158:9 159:12	118:1,8 120:13	142:11 154:14	139:17	183:9 187:15
160:4 161:8	120:15 126:14	161:13 176:13	based 24:3	191:6,7 194:7
164:20 175:23	129:16 130:14	187:1 188:19	33:12 45:9	195:25 196:4
176:19 177:17	130:16 132:4	201:3	69:19 96:11	197:24 201:9
203:25 205:11	133:12 134:2,7	awareness	110:6 118:1	202:15 205:12
207:20,22	138:23 139:7	110:4	139:18 154:12	212:22
208:14 210:12	148:7,9 152:8	awkward 90:19	164:1,3 169:13	believing 63:12
210:21,23	161:20 162:9		169:14,15	bench 51:12
214:13	163:9 164:8	B	171:25 187:5	82:11,14
attorney's	169:10,15 170:1	B 2:10 3:1 15:6	187:10 188:22	109:21
84:24 95:14	175:15,16	27:1 82:16	189:3,4,17	best 7:23 8:19
attorney-client	176:21 177:16	83:5 181:10	208:7	17:19,24 18:10
62:5 63:6	178:6 183:9	baby 23:16	basic 135:21	45:16 64:6,15
81:11 89:19	184:15 190:6	back 9:2 10:19	167:5	82:18 102:11
attorneys 6:22	190:24 191:18	11:20 20:12	basically 12:20	214:8
9:3 12:25 13:11	206:3,5,9,10	23:19 49:8,9	27:13 41:18	Bethany 123:14
16:10,20 17:4	211:14	62:13,14 63:16	92:19 118:25	better 8:9
17:20 18:16	attorneys'	74:2 91:8 99:2	135:3 139:17	30:24 38:15
19:4,22 23:14	134:14	121:12 122:3	154:4 167:7	45:22 50:23
25:20,25 27:7	attract 39:6	122:10 141:24	191:2,8,8	51:20 67:2
27:15 29:17	audited 209:20	144:9 146:8,8	203:10	85:4 93:16
29:23,23 33:3	auditors	150:7 153:4	basis 24:8	107:22 108:13
39:6,23 40:2	209:20	170:23 171:19	29:21 40:4	116:12
40:6 41:3,20	August 23:24	179:9 200:5	106:18 113:6	beyond 49:19
41:23 50:3	author 123:13	200:10 201:18	Bazell 14:6,15	big 38:8 39:2
51:18 54:24	124:13	201:22	165:10	91:20 114:15
55:5 56:18	automatically	backed 98:14	becoming	153:7 195:24
57:2 58:9	205:18,23	background	27:24 87:17	bigger 131:8
62:19 64:17	207:21	84:16 108:10	began 132:2	bill 71:11 177:5
65:8,13 66:2	availability	backing 122:16	179:2	billing 184:14
66:9 69:14	21:20 47:1	122:19	beginning 51:9	bills 42:25,25
70:14 71:4,24	72:20,23	bad 76:18 138:9	175:10 176:9	bit 28:19 33:7
72:16 74:18,23	available 67:6	138:10 169:19	176:20	52:10 61:2
75:15 78:17	74:23 78:15	185:16 206:14	behalf 1:12 4:19	71:22 85:13
79:7 80:14,19	84:10 109:14	210:8	7:8 197:17	104:16 114:22
80:25 81:13	110:18 111:2,6	bail 45:6,9,10,13	behaviors 96:11	134:16 146:10
83:14,17,24	125:14	46:7	belief 142:6	152:13 186:4
85:4,20,23	average 79:6	balls 116:21	believe 9:21	black 119:14
87:10 91:16	aware 62:6 70:1	bank 119:13	20:8 57:25	Blaugh 34:4
93:5,20 94:1	75:17,17 77:5	bar 11:2 116:4	71:24 74:14	73:12

blowing 191:10	bringing 84:8	37:16 39:19	41:12,16,18	34:23 40:7,8
blue 45:13,14	138:4	44:23 67:8	48:1,2,3,20	41:7 54:5
board 23:9	broad 5:5	78:10 81:16	51:13,14 52:23	114:15 116:8,8
body 8:16	148:18	94:8 100:4,7	53:14,22	116:14 118:18
bogged 206:10	broken 63:5,5	100:21 103:8	54:17 56:14,16	120:7 122:16
bond 45:25	brought 44:19	126:8 130:6	57:2 66:21,21	122:17 133:19
46:2 51:25	45:19 57:16	132:14 149:2	68:7,8 70:4	150:16 164:15
52:5,19 81:19	93:3,4 135:1	166:18 174:7	70:25 72:1,11	164:16,18
154:15 161:17	budget 35:13	198:23	73:2 78:23	165:25 166:4
204:11 207:11	35:20,22	204:23	79:12,13,18,21	187:5 188:14
210:12	36:3,12 39:22	called 10:17	82:23 84:6,7	188:17 189:4
bonded 154:11	78:22 183:19	45:13 61:12	85:10,15 86:12	189:17 190:21
210:6	183:19 184:9	87:9 110:16	86:17,24 87:5	196:10
bones 138:5	185:1,17,25	184:12	88:11,18 92:11	caseloads
bono 107:11,13	186:7,11	calling 62:23	92:19 93:18	40:16,16
112:4	budget-wise	calls 10:13	95:15,18 96:9	106:10,13
booking 45:21	117:6	cam 16:16 80:1	96:13 97:14	134:10 150:13
Boone 124:1	budgetary	93:11	99:9 104:8,21	151:1 162:8
born 76:19	78:19 185:12	camaraderie	105:18 107:5	196:14
borrow 36:13	bug 21:13	119:10	109:9 113:25	cases 11:21,22
boss 37:3 39:15	bugs 21:13	candidate	118:6 120:13	12:5,5,13,22
39:16	building 5:16	159:25	134:5 135:1,5	12:23,24 13:8
bottom 114:18	62:12 215:8	candidates	135:18,22	13:15,19,22,24
bound 49:21	bulk 30:19,23	38:5,10	136:15,19,21	14:1,6,12 15:4
72:6,8,9	81:2 96:13	capacity 9:24	139:21 144:13	15:8 16:4,14,14
box 188:20	101:1 207:15	16:23 25:10	146:23 147:12	21:2,6,7,8,10
brain 112:22	bunch 14:9	56:10 98:3	148:8 158:22	21:15 22:2
brand 23:2	40:11 45:16	190:5,5	159:12 160:5	24:10 30:6,7
break 39:9	52:6 116:20	car 99:22 148:2	161:9 165:2,4	30:13 31:8,14
146:5	118:25 147:25	148:10 175:17	165:9 167:21	31:20 32:8,19
breaks 39:7,8	151:25 152:3	care 72:21 162:1	169:23 170:2	32:22,25
115:14	209:12	career 109:7	171:12,12 174:6	33:2 35:8
brief 58:17 95:8	burden 161:8	169:5 191:14	174:9,23	40:10 41:10,21
123:3 198:13	177:17	carry 31:3,5	175:12,17	41:22,24
206:18	burglary 183:16	44:3,4	176:3,19	43:21,24 44:6
briefly 192:22	183:17	carrying 15:3	179:20,22,22	44:9 47:4
206:25	business 12:10	29:6 31:7 44:6	179:24 180:1,3	49:25 50:1,6
bright 154:24	busy 22:2 66:4	150:3	180:6 181:14,16	51:15 54:8,9
159:17 204:12	69:9 91:22	carved 188:17	181:17,18,20	54:19,25 55:2
204:19,23	button 181:16	Carver 120:21	182:21 187:11	55:3,8,12,21
205:14 207:9	Byrne 107:20	120:21	189:15,15	55:24 56:6,13
210:10		case 1:5 2:18	190:9 205:21	56:22 58:10
bring 9:10	C	4:5 6:14 7:17	211:22,24	62:19,20
44:25 45:1	C 3:1 5:1 15:7	7:22 9:4 12:7	215:13 217:2	63:14,16,21
47:3 84:16	82:18,19	14:6 21:21	caseload 2:21	64:17,24,25
116:8,8 158:7	call 10:18 24:15	27:3 30:11	12:17 15:4 21:4	65:12 67:21
167:12	35:24 37:15	31:5,20 40:9	30:7 31:4,7	68:6 69:16

70:1 72:8,9,12 74:10 77:5 79:8,10,16 81:5 82:5 86:8,16 87:17 87:21 91:4,10 95:13 101:14 102:2 104:5,13 104:13,16,18 105:12,20,21 106:1 107:23 109:7,12,23 112:10 113:9 114:17,20,25 118:11 120:15 122:2,5 126:6 126:15 127:3 129:14 130:3,11 130:13,15,16 130:22 131:3 131:15,17,17,18 131:24 132:3 132:25 133:15 133:23 134:8 139:2,5 140:10 142:12,20,24 143:1,20 144:5 144:11,22 145:8 146:12 147:4 148:6 149:10,14 150:5 157:15 157:18,18 158:3 161:20 161:24 162:13 164:9,12,14,25 165:6,12 168:3 171:15 175:16 178:25 180:25 182:12,13,25 183:1,10 186:14 186:19 190:2 190:17 195:9 197:13 206:10 209:6 210:5 Cass 11:18 catch 30:4	categories 192:11 category 148:18 catering 11:5 cattle 148:3 cause 4:15 19:12 139:10 142:9 150:19 caveat 164:18 cc 215:23 CCR 5:21 6:4 214:18 215:22 centered 38:24 central 1:2 4:2 6:16 33:8 34:7 36:2,11 73:8 86:6 116:23 117:17 131:2 172:23,23 178:16 184:10 196:8 207:23 centrally 186:9 certain 4:15 23:22 35:4 36:4 38:17 73:13,15,16 108:18 114:9 122:12 127:6 177:13 183:23 184:14 196:22 213:4 certainly 26:10 34:18 39:13 50:22 67:19 68:20 69:8,9 81:23 82:17 87:4 94:10 108:25 109:1 115:3 117:21,24 149:1 151:8 154:10 155:10 160:20 172:10 197:1 210:8,8 CERTIFICATE 214:1 certification 105:9 108:8,16	112:15,20 187:8,9 certified 4:14 76:22 108:19 122:9,23 196:20 214:3 certify 214:5 216:5 certifying 122:11 122:21 187:5,9 chair 30:2,21 67:23 chaired 30:21 113:9 chairing 30:23 70:22 105:4 chambers 190:3 chance 86:24 change 33:22 49:14 67:3,4 78:25 134:1 211:16 217:6,10 217:14,18,22 changed 46:7 107:18 136:25 207:22 changes 147:6 158:10 215:15 216:7,9 chaos 14:8 chapter 120:22 120:25 121:1,6 121:12 135:23 135:23 137:4 137:21 138:4 155:4 186:23 187:11,24 188:2 189:3 197:16 characterizing 32:20,21 charge 25:6 29:3 148:14 165:5,7,9 168:6 179:19 181:9 182:20	charged 52:15 148:13 167:25 182:19 202:10 charges 165:1,6 chat 194:8 cheap 184:22 cheaper 170:17 192:19 cheapest 78:10 check 30:8 153:14 174:10 checking 19:25 checks 132:7 178:23 chief 140:5,14 144:9 158:22 child 83:7 Chillicothe 131:15 choice 118:2 choose 21:14 38:6,22,23 choosing 117:11 chronic 167:8 chunk 43:19 153:8 185:18 Church 1:3 4:3 4:17 6:13 215:10 217:2 circuit 10:14,14 10:16 12:11 50:8 57:19 189:14 circulated 109:21 circumstances 8:4 205:9 cities 131:13 citizen 94:19 City 4:13 5:11,23 9:18 10:6,14 10:20,25 11:10 11:13 39:21 59:4,12 60:8 76:14 89:2 113:20 121:8 130:21,24	146:24 147:13 163:7 215:3 civil 4:11 6:18 103:4 132:16 159:9 189:15 claims 29:9 clarify 28:1 147:21 clarifying 58:24 classes 128:4 Clay 11:18 CLE 24:15,15 25:11 cleaned 91:23 clear 9:8 24:5 49:3 118:13 138:3,18 189:16 212:18 clearance 98:9 clearly 8:14 53:7 89:16 122:15 187:11 187:12 208:10 clerical 18:23 19:2 42:17 CLEs 94:7 105:7 client 2:12 12:6 24:11,11 30:8 30:10 31:18 33:21 35:2 38:24 39:5 43:17 46:24 47:21 49:20 51:12,14 52:6 52:11,18 58:8 60:7 61:2,8,10 62:7,9,12,12 63:8 68:19,21 69:12 70:2 76:12,14,17 81:15,20,22 81:22 85:16 86:1,2 87:5 88:6,9 90:6,7 90:11,12,13,18 90:20 91:5,7 93:16 94:18
---	---	--	--	---

95:14,17,19	clients' 54:14	201:18	163:5 164:4	concerned 91:4
97:3 98:6	climate 108:1	comfortable	compare 185:2	128:11 143:7,7
99:6 100:11,18	Clinton 11:19	37:13 39:17,18	compared	143:9 185:20
100:24 101:16	close 18:25	coming 10:21	148:5 163:4	191:4 197:10
101:23,25	61:23 154:24	62:20,25 63:1	compel 71:19	concerning
103:8,9 104:1	closed 38:9	126:18 127:5,6	compelled	19:19 138:22
104:8,10	108:23 109:1	128:7 129:13	142:12	162:21 167:11
108:18 110:14	closer 65:20	142:10 207:23	competence	188:25
126:12 136:19	65:20	208:6	54:15 97:22	206:25 208:3
155:13 156:2,6	closing 71:2	commenced	114:6 188:11	concerns 47:2
171:18 174:5,17	83:11,14,22	6:9	competency	53:23 54:3
174:18,20	Coalition 130:3	comment	97:22	189:9,19
175:22 181:14	194:15	151:20	competent	196:11
181:20 199:17	codes 42:25	comments	174:11,12	concerted
client's 84:16	coerced 178:3,6	114:10	complain 78:12	146:25
174:7 179:24	cog 130:9	commission	87:13	concessions
181:15	cognizant 34:11	200:17 216:19	complaint 2:22	26:19
clients 15:23	184:22 185:3	commit 147:20	46:5 81:16	concluded
16:17 23:11	collar 148:18,21	committee	118:6 140:2	103:6,17
30:9 31:22	148:23 149:5	140:25 141:1	143:18 196:17	142:16 213:15
35:5 38:15	149:6	common 76:7	complaints	conclusions
46:19 49:11	collection	81:15	29:11 109:17	207:16
51:13,19,20	178:15	commonly	109:20,23	condescending
52:19,23 53:5	Columbia 5:17	161:17	complete 192:4	119:2
53:6,19 55:4	215:9	commonplace	completely	conditioned
55:10 56:16	come 10:19	93:4	42:5 45:24	115:2
62:17,24 63:1	18:13 20:12	communicate	159:10 184:10	conduct 100:1
63:4,5,17 64:1	22:25 23:9	62:9 75:24	complex 39:9	189:5
64:4 69:6	29:9 32:5	76:6 89:17	comply 139:1	conducted
74:25 75:25	36:11 40:17	132:17 195:19	complying	92:6
81:16,16 85:3	41:17 45:17	198:21	143:25 144:3	conducting
85:21 86:23	62:13,14 64:17	communicated	145:5	24:6
89:18 91:12	94:6,15,20	198:20	compromise	conference
93:7,22 94:23	98:6,7 99:10	communicates	81:11	2:21 120:1
95:23,24	109:23 126:14	195:16	compromised	138:11 175:25
96:19 97:9	127:7 128:6,12	communicating	114:21	176:2 186:24
99:10 100:21	129:11 141:1	103:23 114:5	compromising	196:4,25
101:3 109:19	146:12 148:19	119:20 189:21	62:5	197:11 198:23
110:12,20 111:9	154:17,22	199:16	computer 77:24	conferences
112:5,13 113:4	159:24 161:24	communication	160:24 171:2	49:2
114:6 115:10	166:9 207:2	63:25 114:3,7	211:21	confident
133:25 143:8	207:15 211:21	132:19 177:25	concealed	23:22
144:6,16	comes 16:13	communicati...	150:4	confidential
145:13 154:11	34:1 35:21	54:9 89:21	conceivably	61:16,18 96:21
155:16 160:19	41:13 44:12	119:23	32:22	conflict 11:17,22
160:21 168:5,6	70:12 99:2	company 137:1	concept 37:23	12:5,9,13,21
202:19 206:13	161:3 184:14	comparable	37:25	12:23,24

13:20 55:4 56:15,23 107:5,14,17,23 132:6 172:11 conflicts 11:16 12:1,15,17 13:2 13:2,3,5 14:22 107:7 108:5 135:12 confusing 189:16 connection 75:5 consecutive 122:14 consent 80:8,12 consented 80:7 consequence 95:16 consequences 93:21 94:10,13 94:24 95:11,15 consider 34:22 41:6 132:20 168:22 204:22 considerably 161:4 consideration 156:19 158:8 159:19 207:18 considerations 158:19 considered 22:14 73:4 201:3 consistent 13:9 149:20 163:18 consistently 62:9,23 consolidate 183:8,8 constant 20:8,8 20:9 constantly 20:1 20:4 28:23 28:24 62:25	167:8 182:5 constitutes 202:4 constitutional 53:1 constitutionally 186:15 constraints 78:20 consult 93:24 158:15 consulted 194:5 contact 2:12 30:8,12,13 33:21 35:2 43:17 60:7 61:3,8,10,13 150:11 160:17 169:1 177:24 208:9 contacting 84:15 contacts 30:14 contain 201:2 contempt 138:20,24 139:11 142:4,7 143:4,15 144:8 151:7 content 150:13 150:15 context 115:9 209:5 continuance 57:12 continuances 48:16 continuation 103:14 continue 48:16 72:22 continued 47:17 72:12 137:1 142:17 continuing 143:20 contract 93:23	94:1 168:6 contracted 11:21 contrary 63:10 control 66:7 180:14 184:18 184:20 188:18 208:5 controllable 40:16 controller 180:13 185:9 controls 154:6 convenience 176:18 conversation 88:6 108:3 173:19,24 174:3 190:16 196:6 conversations 62:1 150:8 188:24 194:23 convey 86:4 90:4 conveyed 86:22 conveying 85:23 90:1 coordinator 105:1,7,8 cop 99:22 copy 215:12,15 core 20:10 corporate 195:14 correct 17:10 31:4 32:23 46:11 59:7 60:3 61:8,9 64:11 74:21,22 75:3 82:15 89:10 100:9 102:15 103:20 113:15 121:14 121:15 130:25 132:25 136:12 138:14 141:6	141:22 144:10 173:21 197:21 202:9,11 204:12 205:25 206:11 216:8,10 corrections 215:15 correctly 78:4 153:19 154:5 156:25 196:7 207:4 cost 97:10 108:5 212:11 costs 96:24 council 140:9 counsel 6:2,2 16:6 107:25 130:4 139:17 140:5,14 144:10 150:8 150:18 154:16 157:19 158:25 174:11,13 188:10 191:16 191:21 194:21 199:13,19 214:10,13 Counsel's 194:15 count 43:14 94:3 115:11 182:7,8,8,20 182:22 counted 183:10 counties 11:10 11:18,23 12:1 13:10 176:17 countries 76:16 counts 181:18 183:1,15 county 10:15 32:24 45:11 66:14 86:5 91:3 97:1 98:14 102:21 124:1 146:12	146:20 147:12 148:15 149:6 153:11 176:17 176:19 183:6,7 216:3 couple 28:5 39:22 44:6 45:17 46:23 56:25 105:16 109:7 132:6 197:22 course 73:18 102:18 106:2 149:12 161:12 court 1:1 4:1,14 4:16 5:21 6:15 7:5,25 8:12 23:21 28:7 45:5,17 46:3 46:22 47:1 48:6 50:8 52:9,17 53:24 57:19 58:12 66:3 72:21,22 73:23 75:21 75:22,23 76:25 78:9,15 86:2 89:8 96:12 97:7,12 97:16,16 98:13 99:4 105:3 107:2,10,13 108:14 109:10 109:19 111:19 111:22 118:16 119:3,13,17 128:10 134:19 135:5,7,20 136:18 138:6,7 138:12,15 141:6 142:4 143:1,11 144:3,6,15 152:20,22,23 155:14 156:4 160:15 162:19 176:5 179:25 189:14 190:15
---	---	---	---	--

201:18 208:16 214:3 Court's 121:14 145:5 court-ordered 96:20 97:4 courthouses 11:13,15 courtroom 111:7 155:21 courts 29:11 44:23 49:16 55:14 86:6 87:13 91:10 96:10 102:1 103:2,5 117:5 117:8 118:22 119:20 127:8 129:15 135:24 142:18 146:17 174:21 cover 10:15 12:1 coverage 57:9 57:11 58:9 106:14 192:3 196:13 covered 21:7 126:6 145:15 covering 147:9 covers 14:17 54:15 crack 149:22,23 craft 78:2,4 crazy 103:5 116:14 136:17 159:8 162:11 create 169:19 created 14:8 60:6,7 100:16 122:22 125:6 125:11 126:5 200:13 creates 200:15 creation 194:6 cried 115:12 crime 67:17,25 68:9 148:21	149:6,16 202:4 crimes 147:17,19 148:14,18 150:1 164:17 186:21 criminal 44:18 48:20 66:21 132:17 146:12 152:15 157:15 161:2 165:2 166:23 167:14 179:20 181:12 182:15,19 183:4 186:19 189:15 199:1 CRR 5:21 6:4 214:18 215:22 CSR10-3.010 200:2 cuffs 202:20 current 9:16 55:4 56:16 92:21 currently 13:11 15:12 142:14 151:18 173:17 178:24 179:1 custody 15:23 15:24 48:10,17 61:14 95:24 98:7 127:21 128:1,2,12 cut 75:19 119:15 cutting 11:20 cycle 122:4 cyclical 148:25 D D 2:1 5:4 15:7 82:18,19 215:23 daily 24:8 44:24 171:4 danger 98:21 dash 16:15 54:3 80:1 93:11 data 146:13,16	155:7 database 59:5 60:9,11,14,17 60:19 89:3,6 91:18,20 125:17 126:2,3 126:12 129:8 165:13 177:20 180:11 databases 125:19 date 6:11 45:5 48:9 50:11,13 59:15,16,23 60:2,2 80:18 89:4 202:6 215:18 217:4 dates 23:21 66:1,4 76:25 162:19 176:5 Daughbert 166:22,24 day 28:4,5 29:6 44:21,22,25 46:22 65:3 91:8 110:10,12 110:12 113:12 126:13 127:12 135:5 151:23 156:4 162:20 170:25 180:8 195:18 216:14 day-long 24:6 day-to-day 28:20 days 28:11,13 30:11 83:20 98:16,18 115:22 126:20 132:13 143:23 143:25 DC 77:1 DDs 39:13 deadline 80:19 deadlines 80:17 114:5 deal 29:10 49:8	49:10 93:17 106:16 134:19 160:18 174:6 191:12 dealing 120:4 deals 85:14 88:4 93:7,13 Dear 215:11 debated 106:16 debt 205:10 December 1:13 4:10 6:11 215:4 215:13 217:4 decide 74:12 85:10 decides 17:24 101:17 deciding 161:25 decision 58:2 89:8 103:24 109:4 113:24 114:4,24 115:22 116:24 121:14,24 132:24 134:15 134:17 136:9 171:25 175:2 188:21 194:15 196:1 208:24 decisions 34:7 35:16 36:6 56:6 declare 216:10 dedicated 180:17 deep 38:18 deer 148:2 def 51:10 defendant 44:19 50:16 53:2 103:23 152:15 157:15 161:2 165:2 179:20 181:12 182:19 183:4,5 208:4,24 209:10	Defendant's 207:1 defendants 1:7 4:7,18 5:14 6:3 7:2 46:10 50:25 96:5 126:6 167:14 202:16 210:1 defender 9:15 9:17,20,21,25 10:3,3,5,22 28:21 31:21 46:21 53:18 59:12 89:5 100:18 105:17 107:23 108:5 108:25 111:25 114:9 116:9 121:19,22 122:1 124:16 135:17 149:13 150:20 157:25 158:4 159:18 160:8 179:9,10 179:16 183:20 186:13 191:15 200:1 201:14 209:14 defender's 5:15 16:1 51:10 116:5 126:1 147:8 156:17 208:22 215:7 defenders 37:5 37:18 51:1 58:7 59:10 84:12 107:24 120:2,12,18 123:23 152:5 165:16,18 166:16,17 188:13,25 196:3 197:3,7 defense 30:16 30:17 199:2 definitely 22:20 27:16 34:11
---	---	--	--	--

35:3 63:17 67:19 68:8 71:20 72:25 73:4 76:13 78:3 150:1 157:3,10 158:11 161:19 182:25 184:3,4,13,16 210:3 definition 70:7 definitive 79:12 delineated 36:14 delinquency 104:21 109:9 Delmuro 111:23 demoralizing 21:1 denial 77:19 138:1 171:2 197:21 212:15 denials 171:1 211:19,21 denied 16:5 77:16,20 121:7 121:10,11 135:20 136:1 136:14,16 137:17,19 138:9,13 155:8 155:10,12,15 156:2 169:6,9 169:22,25 170:4,7,9,14 170:22 192:7 197:19,22 211:6,11,12,17 212:4,8,9,11 deny 107:2 211:25 denying 212:1 dep 23:25 168:23 depart 19:14 department 77:21 departures	19:12 depend 26:5 48:9 68:10 depending 25:3 28:14 40:9 47:24 167:20 depends 28:6,7 44:12 47:1 51:5 52:22 70:7 102:18 132:10 164:18 164:18,20 Depleted 158:2 depo 66:7,10,17 depos 36:13 depose 65:8,10 65:14 184:19 deposed 7:18 66:23 168:20 deposes 7:9 deposition 1:11 4:9 6:3,9,12,17 8:23 67:9,10 77:12 150:9 168:23 169:3 169:6,9,14 211:6,8,11,14 212:2 213:15 214:6,11 215:12 216:6,8,9 depositions 29:4 31:11 36:8,10 66:20 67:6,13 168:7 168:14 213:1,9 deputy 13:22 17:6 27:13 139:6 162:1 173:5 195:16 derived 45:20 describe 10:20 130:8 DESCRIPTION 2:11 3:2 deserves 85:10 85:10	designed 187:12 desire 91:9 desired 215:16 desk 161:25 details 80:11 detention 110:8 110:10,19,23 determination 2:23 105:24 106:18,19 107:4 153:3 155:13,20 156:16 157:14 159:1 160:12 160:14 200:7 201:17 209:9 determinations 55:25 161:22 163:25 determine 111:5 determined 191:15,20 209:7 determines 152:14 208:22 determining 3:4 128:12 201:4 201:17 203:6 develop 84:18 developed 70:25 developing 84:11 development 20:7 112:22 devote 31:13 112:1 devoted 12:20 dicta 119:1 dies 116:11 difference 137:24 147:11 186:14 differences 146:22 147:1 different 10:2	14:14 35:8 42:5 77:22,23 77:23 84:16 93:25 104:14 107:12 150:2 156:15 158:21 162:16 169:21 177:12 182:13 182:13 189:11 196:9 199:14 199:20 differently 147:3 difficult 31:24 61:21 68:5 72:20 151:2 154:18 difficulty 109:18 dig 80:15 diga 76:14 diligence 54:7 114:3,6 188:11 diligently 199:12 dire 24:18 102:4 102:12,14 direct 14:3,10 directed 101:19 direction 101:22 139:5 214:9 directions 68:22 directive 38:17 196:15,19,20 directly 29:10 director 73:14 195:16 dis 88:17 disappointed 75:18 disappointing 119:6 disbursed 21:2 discern 186:13 discernible 147:1,11 disciplinary 140:5,9,14	144:9 disciplined 54:4,23 88:16 113:17 disclose 161:14 disconnect 39:12 discontinued 52:1 discourage 83:17 discourse 52:21 discovery 16:13 66:11,12 71:5 71:12 79:25 80:15 93:14 167:6 168:8 discrepancy 60:20 discretion 18:1 36:25 discretionary 162:6,7 discuss 2:21 37:8 92:9 168:17,18 discussed 104:10 150:22 193:9 discussing 24:10 92:7 discussion 18:7 52:19 89:23 91:11 92:12 106:9 120:3 151:14 190:4 197:2 discussions 189:11 196:25 disgusting 188:15 disk 16:13 dismiss 104:3,3 104:8 dismissed 65:3 disposable 161:19
---	---	--	---	--

disqualify 207:21	162:5	door 20:9,10	e-mailed 54:24	122:23
disseminated 91:16	docket 32:11,15	double 153:14	86:14 195:11	eight 17:5 176:6
distinctions 15:6	32:21 49:25	doubling 32:7	e-mailing 182:6	eighth 91:24
district 1:1,1 4:1,1	50:7 51:9	dozen 130:23	e-mails 85:19	eighties 190:23
4:16,17 6:15,16	58:5 68:3	151:23	115:23 195:8	either 32:7
9:17,19,21 10:4	85:21 86:11,16	draft 193:16	197:12	49:11 65:3
10:7,8,11 28:21	113:4 144:18	194:15	E-notices	79:13 114:10
31:21 36:23	144:25 175:14	drafted 193:22	195:17	117:18 119:1
37:5,18 59:9	175:16,20	193:25	earlier 43:11	131:25 152:20
59:11 89:5	176:21 179:25	drafting 193:18	63:20 71:23	153:5 175:2,7
96:5 105:17	190:24	194:2	85:13 112:6	182:5 212:4
108:25 117:19	dockets 29:7	drain 20:2	113:16 141:10	eligibility
118:22 119:19	148:6,8,9	drawer 155:8	150:8 163:19	203:23
119:20,24	document 49:4	157:3	171:6 192:6	eligible 25:16
120:2,12,18	58:20 59:1,18	drive 131:15	201:16 211:5	25:22 26:17
121:19,22	59:20 88:19	184:16,18	early 26:17	159:22 167:13
122:1 123:23	88:23 123:8	drive-by 40:12	47:18 79:18,21	204:9 205:19
124:15 129:16	125:2,6 141:16	driving 99:21	88:15 93:10	205:23 206:3
130:25 135:17	193:1,2 194:6	148:9	earmark 111:11	206:8 208:23
135:20 136:1	201:22 203:7	drop 151:12	earmarks	209:7
146:10,19,25	203:9 207:2	dropped 21:10	183:22	Ellen 33:15 34:3
147:9 160:9,10	documents 9:11	21:11,15 116:20	earshot 62:2	34:4 73:12
166:15,16,18	130:2 198:6	drug 48:1 67:23	ease 13:8	Elmer 33:16
168:14 171:22	207:13	148:14 150:1	easier 13:9	37:3 59:7
176:14 179:9	doing 11:16	druthers 66:22	134:4	195:15
179:10,16	12:21,22 13:4	due 158:18	easily 20:5	eloquently
180:18 183:20	14:5,10 17:21	212:11	easy 26:11	134:13
186:13 188:25	18:12 20:1	DUI 49:7 83:1	39:15,19 152:6	else's 106:13
196:3 197:3,7	23:6 28:17	148:9	economical	Emily 4:13 5:21
district's 133:19	29:23 30:1,15	duly 214:6	78:8	6:4,19 214:3
districts 119:21	30:25 31:5	duties 2:13	edit 16:11 170:25	214:18 215:22
123:24 176:13	43:6 49:1,24	17:22 103:1	170:25 171:3	employed 9:14
176:13 178:21	50:22 55:14	118:16 140:11	211:15,20	121:16 214:10
distrust 63:19	63:2,3 66:2	188:9 192:24	edits 211:23	214:13
diversion 47:20	75:5 83:16	duty 18:6 89:17	educated	employee
97:2,2 111:2,9	86:25 87:16	dying 11:16	163:20	214:13
111:10,14,19,21	87:21 89:24		effect 92:19	enclosed
divide 18:14	92:10,13 98:4		94:9	215:12,13
division 1:2 4:2	112:1 117:11		effective 34:14	Enclosures
6:17 32:3,4,6	118:9 119:9		59:23 102:11	215:23
44:13 49:23	120:11 129:3		effectively	encompass
50:5 176:4	132:6 139:6		27:14 122:24	135:24 189:9
divisions 32:1	140:15 143:5		efficiency 91:10	encompasses
divvy 161:25	144:11,20		162:17	11:9 146:19
	179:23 180:5		efficiently	188:9
	180:19 181:4		20:22	encounter 76:8
	192:3 203:14		efforts 120:7	encourage
		E		
		E 2:1,10 3:1 5:1,1		
		e-mail 2:12,15		
		59:6,15 60:3		
		60:4,13 86:7		
		89:1,3,7		
		118:24 130:2		
		141:14,15,19		
		172:1 181:24		
		195:15		

66:24 67:19 78:21 87:4 encouraged 91:13 94:10 encumbrance 29:4 35:24 168:11,11 171:1 encumbrances 184:7,12,13 ended 37:4 55:6 179:3 210:6 energy 66:18 enforce 167:6 engage 47:17 102:4 engaged 19:24 engaging 74:7 132:20 enjoyed 134:7 entail 120:23 enter 32:25 41:12 53:21 56:14,22 97:3 126:11 143:23 143:24 160:8 160:11,13,15 168:6 entered 33:1 41:22 136:15 144:5 164:11 entering 33:3 53:24 56:16 144:13 145:2 175:23 176:7 180:14 entire 12:15 13:6 30:7 37:3 187:12 202:20 entirely 18:6 entitled 46:10 192:23 201:23 entity 195:14 entries 74:3 envelope 38:15 equivalent 132:16	errata 215:14,16 215:17 217:1 especially 31:19 39:15 80:11 85:7 86:4 92:8 183:13 essentially 174:23 estimate 70:18 estimates 177:8 et 1:3,6 4:3,6,17 4:18 6:13,14 215:10,10 217:2,2 ethical 54:1 55:11 56:13,23 114:1 118:16 163:22 175:7 191:1 ethically 54:25 56:11 115:9,24 118:11 ethics 56:20 122:17 134:24 139:1,4 160:22 191:5 199:17 eval 97:4,6 evaluate 30:17 93:21 evaluated 97:9 141:4 evaluating 34:21 87:17 evaluation 30:24 33:12 33:14 96:20 97:11,16,20,23 98:3,5,12,19 evaluations 33:9,14 96:6 96:11,13,15,17 98:14 112:12 event 87:18 events 80:4 eventually 31:21 64:4 everybody	28:12 67:13 87:14 92:2 116:9 148:13,13 160:23 175:20 evidence 81:20 120:24 169:20 exact 121:8 exactly 40:14 127:11 180:16 EXAMINATION 2:4,5,6,7,8 7:10 145:23 198:15 206:23 208:20 examined 4:10 7:8 example 24:6 68:11 76:16 103:9 examples 192:11 Excellent 104:15 exception 13:1 42:23 188:17 exceptions 81:4 81:4 exchange 118:24 excuse 14:4 Executed 216:14 exhaust 186:6 exhausting 120:8 exhibit 2:12,13 2:14,15,16,18 2:19,21,22,23 3:3,4 58:21,22 88:20,21 123:5,8 124:4 124:7,24 125:2 129:21 129:24 136:2 136:5 137:5,7 139:22,24 192:22 193:12 193:13,24	194:11 199:22 199:25 201:6 201:9 203:1,4 exhibits 3:6 70:12 192:22 exist 126:23 existed 187:2 exit 19:13 exiting 134:5 expect 30:16 86:6 103:12 expectation 46:17 expected 11:25 102:20,23 expense 78:19 expenses 35:18 35:22 expensive 96:18 experience 10:19,21,23 22:24 23:1 25:2 26:1,13 26:14,16,19 63:13 67:11 69:20,21,22 110:6 113:7 118:20 134:4 140:22 147:17 149:8 164:1,19 180:18 182:18 183:25 188:23 experienced 14:19,25 26:8 37:8 64:10 113:13 expert 54:21 71:23,25 72:7 72:13 74:5,12 74:15 75:8 84:9 105:13 112:7,17,18 169:22,25 170:12,17 171:11 177:18,19 178:1 178:3,7 192:10	212:4,8,10,13 212:16 expert's 177:7 expertise 105:19 experts 36:8,10 72:20 73:7,13 73:17,19,22 74:2,9 84:8 112:10,12 176:24 177:1 177:13,16,20 177:25 178:12 178:13 192:17 192:17 212:23 213:5 Expires 216:19 explain 22:8 25:14 explaining 86:23 expressed 55:5 expressly 6:7 extensions 98:17 extent 34:22 38:17 68:10 81:25 extra 50:5 extreme 208:16 extremely 109:12,15 eyewitness 73:15 112:16 eyewitnesss 72:13
<hr/>				
F				
<hr/>				
facing 117:4 fact 55:3 128:21 134:7 140:8 142:8 161:2 173:5 208:5 factor 78:22 158:4,16 factoring 106:21 factors 159:18				

203:23	205:7,22	109:16 122:17	22:15 30:23	50:9 78:10
204:20,21	feds 149:7	140:6 169:23	38:7 153:1	86:1 93:18
205:25	fee 93:24,25	170:1 181:3	154:21 159:20	94:6 96:12
facts 52:14,23	167:14,15,20	190:24	163:11,13,21	107:19 113:23
failure 74:15	167:25 168:5	fewer 91:10	202:20,24	121:9 126:20
199:11	178:17	150:3 163:9	filled 64:9	127:7,7,17
fair 21:24 25:4	feedback 33:19	208:19 209:17	filling 202:8	131:24 134:18
35:4,5 37:2	33:22 34:1	209:18 210:10	207:15	138:1,19 173:11
88:12 135:14	70:21 172:7	fight 90:17,17	Final 211:5	173:16,20
150:17 182:12	feeds 95:3	fighting 81:21	finally 88:20	195:10,12
212:19 213:3	feel 11:18 18:11	160:20	financial 156:11	200:1 202:1
fairly 42:14	21:3 35:6 37:2	figure 185:10	208:3	204:6
108:2 111:22	43:5,23 85:24	203:11	financially	first-time 87:9
114:9 117:5	108:24 112:13	figured 135:24	214:14	172:15 173:5
134:9 139:3	116:19,20	file 16:2 18:25	find 65:22 66:11	174:9,14,25
159:17 163:10	122:7 130:21	71:6,9,21 79:7	68:13,19 72:19	175:3
180:10,24	142:12 146:4	79:9 80:25	76:4,6 155:16	fiscal 184:1,24
183:10 187:22	148:23 149:5	81:14,17 97:21	177:18 209:24	Fisher 114:11
faith 138:9,10	183:6,14	99:3 101:24	209:25 215:12	115:25 191:6,9
142:6	184:16	102:23 103:13	findings 155:14	fit 166:16
falling 54:22	feeling 39:12	103:19,19,25	fine 88:1 100:14	five 15:20 18:17
falls 71:12	78:6 91:5	104:11 110:23	120:14 137:14	27:5 29:5
familiar 129:20	109:25 119:5	117:23 135:22	190:7 198:11	42:7 59:25
130:5 187:20	feels 9:9 143:3	137:2 140:7	199:10	65:12 70:17
187:22 194:14	143:13,13,14	149:1 153:5	200:22	111:24 127:3
200:8,25	fell 114:2	160:24 189:13	finish 8:18,18,20	143:23 176:23
family 16:7	felon 87:9,11,18	189:14 209:11	firm 39:3,3	179:5 208:19
far 10:23 14:20	172:15 173:5	filed 46:4 79:15	101:21 107:13	209:18
24:13 41:10	173:17 174:8,9	79:16,18 80:18	107:15 112:2	fives 143:25
43:17 80:17	174:25	81:2 102:25	131:14,16	flat 93:24
87:2 92:6	felonies 15:7,7	104:6 121:6,8	132:23 133:4	167:14 212:14
102:19 115:20	32:15 44:1	121:9,9 135:11	133:5	flat-out 212:15
125:6,15	82:16,19 83:5	135:18,18	firm's 133:8	Flip 200:3
128:10 134:10	86:9,19 147:18	136:8,9,11,20	firmly 144:7	Floor 5:5
142:20 147:4	147:23 148:16	137:3,20,25	firms 107:11	fluctuates 24:3
151:15 201:2	felons 174:14	138:5 140:17	112:5 130:11,13	fluently 76:19
farfetched	175:1,3	187:23 189:12	130:14,15,17	flying 77:1
169:16	felony 13:14 14:7	190:10 197:17	130:22 131:3,11	fo 131:11
fast 136:18	15:3 27:1 44:2	197:17 209:10	131:11,19	focus 12:10
fault 204:1	82:24 83:2	files 30:12,15,19	132:20 133:13	166:15
faxing 42:22	87:10,20	151:12	134:3 150:20	focused 62:24
fear 20:22	103:11 149:11	filing 42:22 81:7	151:5 164:9	131:8,11 165:25
fed 63:18	168:1 171:12	81:19 82:1	first 8:12 11:2	focusing 156:23
federal 84:12	173:11,16 181:9	118:6 146:18	23:4 24:1,11	197:16
152:24 153:22	181:10,10	188:4 215:18	30:14 38:6	folks 16:5,5
154:25	182:15,16,16	filings 122:4	44:20 45:4,5	45:17 66:15
203:22 205:2	felt 63:21 88:14	fill 16:1 20:18	47:14 48:14	98:10 111:12

145:5 153:8 167:19 follow 45:15 62:14 69:3 108:17 152:24 153:22 176:14 176:19 follow-up 198:17 follow-ups 198:1 198:3 206:19 followed 97:22 following 45:22 134:21 136:16 food 149:3 forced 160:13 forefront 60:16 foregoing 214:6 216:6,10 foreign 76:7 forensic 77:20 77:24,25 192:6 212:10 forensics 77:25 foresee 188:22 forever 39:16 forgetting 199:7 forgive 148:17 181:7 form 2:22 25:24 27:15 201:19 216:7 formal 45:3,4 47:7 105:10 134:16 185:14 185:24,24 209:10 former 156:23 158:3 forming 111:23 formula 35:10 forward 11:25 57:13,17,23 58:2 117:18 138:20 147:5 173:4 forwarded 193:8	found 31:23 38:10 76:17 99:4 109:12,15 130:9 138:10 156:11 Foundation 4:12 5:4 6:18 four 15:14 16:9 18:16,21 27:2 27:19 33:25 40:18 64:5 157:18 162:12 163:8 176:5 196:9 fours 27:21,21 33:17 fourth 15:13 157:21 fraction 64:16 frame 9:5,8 frankly 143:13 152:2 free 131:15 133:9 146:4 frequency 93:3 frequently 71:4 79:6 80:24 83:4 112:9 147:18,24 207:5 Friday 24:15 94:7 105:6 210:22 friends 39:13 151:8,9 friendships 38:23 front 119:7 141:6 201:10 209:3 fruition 18:14 frustrated 50:3 frustrating 109:12,16 117:4 Frye 2:13 89:9 89:12,17,22 89:24 90:25 92:7,10,12,14	92:17,24 166:23 192:24 full 15:13 41:24 155:8 157:3 191:3 full-time 120:5 120:6 fully 70:15 fund 168:11 funding 117:9 154:14 158:3 185:24 funds 11:17 74:7 76:2 94:1 167:11 168:7 176:25 178:15 178:17 184:1,2 184:3 208:12 208:13 funny 161:10 further 71:9 89:20 134:5 138:15 202:10 204:10 214:12 <hr/> G gained 22:13 game 18:12 65:17 gears 152:13 178:14 general 30:16 39:11 71:6 78:6 91:17 99:12 101:24 155:3 168:17 180:9 GENERAL'S 5:10 generally 14:10 20:16,18,20 24:17 34:6 38:8 39:23 44:19 45:9 46:15,18 48:19 50:11 51:1 53:8 53:13,17 68:17	69:5,7,14 73:12,20 75:21 79:17 80:21 86:15 95:20,22 96:8,10,12 98:4 99:8,8 100:20,23,24 110:16 111:8,9 112:6 113:2 114:2 118:22 134:15 140:23 140:24 150:14 152:19 154:8 154:16,22 155:22 169:13 170:5 174:18 176:2 211:21 gently 34:15 German 151:6 getting 29:22 31:23 40:15 51:25 52:1 54:15,16 62:4 66:16,17 69:25 70:12 72:22 80:10 81:9 84:17 100:10 126:17 143:23 175:5 190:9 197:12 206:9 Gillian 198:6 give 16:3 20:21 21:22 39:7 49:6 52:24 65:23 70:18 86:11 105:8 202:9 203:18 given 18:12 26:14 36:4,18 66:22 78:19 106:10 107:25 162:20 184:25 203:16 gives 42:25 205:3,8	giving 39:8 49:11,15 133:25 143:23 go 11:14 15:24 21:23 22:13 24:10 30:6,7 32:19,22 33:2 36:1 39:4 47:14 49:22 54:13 57:13,17 57:23 58:2,14 59:17 67:19 69:12 70:14 73:8 74:2 78:14 82:20 83:3 84:5 86:11 87:25 88:1 94:20 95:4 98:8,9 102:2 119:3,13 120:23 122:25 125:21 133:2 143:1 145:18 146:8 147:5 148:5,9,25 153:4 163:9 166:14 169:16 172:7 180:3 181:15 183:18 185:9,18,23 186:12 198:4 198:10,10 200:10 206:20,22 209:15 goals 38:1 goes 18:5 20:24 23:20 23:21 24:14 35:17 45:11 47:9 67:25 70:9 100:23 104:24 111:19 148:25 149:7 156:8 157:13 159:1 166:25 171:24
---	---	--	--	---

going 7:21 11:25 13:9 21:22 22:25 24:25 28:15 39:1 46:18 47:25 48:7 51:7 55:10 56:22 57:8 58:19,20 62:14,15 64:6 64:24 68:9 72:18 78:7 79:10 80:20 86:2,17,18,19 88:19 89:13 90:20 92:10 92:21,23 93:25 97:3 104:15 105:3 107:24,24 114:22 115:23 116:1 119:4 122:15,20 123:7 124:6 133:25 136:4 138:19,20 139:1 142:13 145:1 151:14 152:10,11,11,19 153:9 156:7 158:14 159:22 159:23 160:14 162:13 166:6 169:2 172:13 173:16 174:4 176:9,19 183:12 184:4 184:20 185:16 192:2,3 197:14 202:16 203:3 210:16,17 good 7:12,13,15 33:21 34:17 63:9 76:25 101:5 119:8 142:6 145:25 146:1 172:5,11 gotten 12:4	33:19 77:7 85:4 93:16 127:2 139:15 143:22 government 62:17 governor 5:9 7:4 117:9 146:3 graduated 11:1 grand 47:4,9 48:1,1,2,4,7 grant 102:1 granted 121:10 grasp 131:16 Gray 5:20 6:20 great 41:2 93:2 190:8 Greg 125:8,10 Greg's 125:12 Greitens 5:9 7:4 146:3 grind 19:18 ground 145:16 group 24:1,7 28:9 49:4 groups 152:3 162:18 197:8 grown 37:23,23 37:24,24 guardian 107:1 168:4 guess 26:7 33:1 43:10 45:16 53:19 57:6 60:13,16,20 73:6 99:10 111:1 117:7 146:25 149:11 150:12 154:9 158:1 161:24 162:9 164:7 172:19 192:11 195:18 200:16 204:22 208:9 guesses 163:20 164:5 guessing 64:22	64:22 guidance 78:18 91:15 117:17 140:13,14 guidelines 2:23 152:25 153:23 155:4 176:10 200:7 203:22 205:3,8,23 210:10,11 guiding 168:13 168:14 guilty 50:17 85:14,17 101:17 gun 150:5 183:14 guns 150:3,3 guru 56:20 guy 23:5 99:21 136:23 144:20 148:21 195:1 guys 191:10 <hr/> H H 2:10 3:1 half 24:21 halfway 184:23 hamper 74:17 hampered 62:8 70:3 81:13 hand 58:20 88:19 123:7 124:6 136:4 199:24 201:8 203:3 handed 35:20 64:4 105:11 handful 176:5 handing 125:1 129:23 137:7 139:24 handle 13:14,17 13:19,22,24 13:25 21:4 23:22 43:21 44:9 48:12 55:2 56:7,11	56:12 104:16 117:19 134:24 147:4,12 186:20,21 handled 12:24 13:23 14:11,13 63:15 107:6,7 109:7 135:5 handles 106:2 146:23 handling 63:14 68:3 81:5 105:9 171:10 happen 12:4 45:3,4 46:18 52:8,21 80:13 82:3 84:21 92:22,25 93:13 96:8 111:7 155:18 158:14 159:8 happened 9:7,9 37:12 112:25 112:25 135:9 154:11,16 210:3 210:8 happening 92:14,18 132:19 139:14 151:19 happens 47:14 57:4 63:12 70:6,14 73:4 74:14 88:10,12 157:14 161:17 176:2 182:21 182:24,25 183:2 hard 40:14 41:8 64:14 72:5 116:7 148:4 179:25 206:15 harder 38:7 harmful 52:13 Harrisonville 120:20 hate 87:13	hates 87:14 havoc 134:9 Hazel 135:18 136:9 he'll 24:10 28:8 49:25 head 94:5 120:14 200:16 headed 79:16 heads 164:10 health 97:2 98:10,19 114:13 114:14 115:14 hear 8:7,14 90:7 144:9 154:5 heard 50:22 90:8 156:25 hearing 45:7 46:11,13 47:10 53:17 57:3,9 92:17,24 97:22 100:4,6 110:10 111:20 120:22,23 121:11 135:9 138:5,19,20 139:12 142:1 143:4 150:19 151:7 155:18 hearings 48:19 89:24 92:10 92:14 100:2 108:17 110:8 120:25 hectic 23:17 held 6:17 10:1,2 138:24 139:11 142:7 143:14 155:20 help 8:11 23:7 207:14,15 helped 130:12 helpful 51:17 73:16 117:15 125:25 143:6 helps 42:24 112:3
---	--	--	---	--

hen 156:2	home 20:11	hundreds 166:5	impeach 44:15	including 13:13
Hey 153:25	153:9	hurts 52:6	67:3	25:23
181:25 184:4	homeless	152:5	impeachment	income 106:20
189:25 190:2	208:8	Husch 151:9	167:5	107:3 161:19
190:4,16	honestly 41:8,15		implement	203:21 205:2
hiding 153:12	50:19 91:20	I	171:20,21	205:7
high 5:11 21:25	96:17 101:11	ICE 95:20 96:1	172:20	incompetent
157:10 163:10	105:11 118:2	96:4	implemented	99:3,4
higher 163:18	188:4 190:12	ID 72:13 112:16	37:10 172:4,14	increasing
170:7	194:19	idea 67:14 87:21	implementing	190:20
highly 26:25	hook 104:8	130:19 142:10	172:18	Independence
Hinkebein	hope 12:2,8	142:19 181:19	implicate	11:14 146:24
113:21,25	30:22 50:20	186:22	204:19	147:14
114:23 115:19	66:15 86:25	209:22	implicated 56:5	indicate 55:11
119:25 134:15	178:9	ideal 40:1 41:2	implication	140:6 203:24
141:7 196:1	Hopefully 66:11	41:15,17 42:13	27:24	204:23 215:15
Hinkebein's	176:7	57:7 84:6,7,9	implications	indicated 49:5
141:4	horizontal	87:19	21:25	indicates 81:20
hire 16:6,7	176:15	ideally 109:11	important 21:21	161:18 205:10
25:15 76:1,24	horrible 76:20	128:9 212:22	66:20 80:13	indicted 49:2,21
108:16 112:14	115:15	ideas 37:9 81:17	87:19 168:22	indictment 47:8
154:15 156:7	host 54:21	169:16	171:17,18	indifferent 117:6
203:24	62:21 150:4	identification	imposing 90:23	indigence 2:24
205:10 206:4	hostile 38:17	58:21,23	impossible	3:5 200:7
206:8	108:2	88:22 100:6	23:25 27:13	203:6
hired 19:5	hound 34:15	123:6,8 124:5	34:25 54:8	indigency
22:20,22	hour 24:20,21	124:7,25	61:18 68:7	55:24 105:24
23:5,5 26:13	177:6 210:7	125:2 129:22	impression 90:1	106:17 160:12
45:17 76:13	hour's 136:17	129:24 136:3	90:2,3 170:20	160:14 201:4
112:12,21	hourly 177:7,11	137:6,7 139:23	improper 171:21	201:17
210:22	hours 12:20	139:25 199:23	in-house 24:17	indigent 96:5
hires 22:18	16:14,15 25:11	201:7 203:2	78:1 170:19	147:20 152:15
23:2	28:25 39:3	identifications	inability 62:8,8	153:3 155:17
hiring 15:13	107:12,13	100:3	70:3 81:13	156:11 160:19
19:21,24 28:17	113:12 120:10	identify 68:11,12	84:25 95:14	210:1
28:22 38:3	151:23 177:8,8	68:13 99:22	205:10	individual 17:12
43:8	177:10 181:16	110:19	incarcerate	17:13,19 56:18
historically	house 68:23	ignorance	77:22	117:19 132:24
49:16 107:8,9	69:2 156:3	148:17	incarcerations	135:22 161:8
126:16 162:8	housing 75:1	ignoring 62:22	77:22	162:8 205:9
174:15 185:22	HR 29:7,8	immediately	inclined 112:3	individually
history 211:3	huge 43:19	21:8 54:24	include 32:15	45:24 55:7
hit 34:12 167:9	132:7	115:14	63:25 82:10	individuals
181:16	Hughes 4:13	immigration	99:6 130:25	150:12 180:14
hold 24:25	5:21 6:4,19	93:21,23 94:6	included 74:16	ineffective
141:24 144:8	214:3,18	94:9,13,14,23	includes 73:22	188:10 191:16
208:13	215:22	95:11,15,17,23	73:22	191:20 199:12

199:18 ineligibility 205:4,9 ineligible 207:11 inept 109:16 inexperienced 22:19 informal 71:14,17 105:5 informally 28:9 information 63:2 91:15 93:8 108:10 202:9 211:16 initial 29:24 44:23,24 45:6 46:16 47:10 50:17 51:1,8,8 51:18,19,22 52:3,12 53:4,9 85:23 88:2 97:17 137:24 initially 49:14 initiative 150:18 input 172:25 181:5,15 194:19 inquiry 204:10 insane 120:14 120:16 insist 67:23 97:3 100:21 instance 101:20 instances 74:11 81:12 84:24 instantly 21:3 instituted 88:13 instructed 87:1 87:3 instruction 135:21 instructions 3:4 203:6,10 205:14 instrument 45:18,23 intangible 62:11 intellectually	190:12 intending 204:2 intention 176:18 intentions 64:6 interchangea... 10:12 interest 55:4 91:7 interested 27:21 121:3 214:15 interim 22:3 internal 166:3 internally 10:17 203:15 interned 10:24 Internet 149:19 Internet-related 149:17 internships 10:25 interpreted 77:10 interpreter 76:4 76:6,17 77:6,9 interpreters 73:23 75:20 75:21,24 76:3 76:20,21,22 77:2 interrupting 166:19 interrupts 109:24 intervene 98:23 intervening 21:5 interview 64:18 64:23 69:6 interviewed 65:1 interviewing 19:25 65:5 68:25 interviews 16:14	16:15 20:20 24:12 27:15 43:8 100:23 101:4,14 introduce 6:23 investigate 69:16 70:4,9 86:24 93:17 investigated 174:4,6 investigation 29:10 63:3 64:13 70:10,12 70:16 80:11 88:11 100:15 176:7 180:5 investigation- ... 70:24 investigator 41:3,7,16 69:10 investigators 15:10 18:17 40:18,22 41:5 41:12,23 42:1 68:11,17,21,25 69:5 75:4 184:15 involved 18:4 98:2 111:12,25 122:8 130:17 132:8 185:11,11 193:18 194:2 involves 54:17 isolated 152:6 issue 39:14 72:24 79:14 166:4 issued 139:10 issues 2:21 24:17 26:2 56:24 73:16 79:11 117:10 124:23 138:4 138:22 150:20 166:1,13 184:13 item 184:7	itemized 36:19 <hr/> J Jackie 9:1,5 137:13 Jackson 32:24 45:11 66:14 86:5 91:3 97:1 98:14 102:21 146:12,20 147:12 148:15 149:6 153:11 183:6,7 Jacqueline 5:15 7:1 215:6 216:21 jacqueline.shi ... 5:18 jail 15:24 16:7,17 23:20 24:10 45:19,21 54:13 61:13,14,19,19 61:23 98:8,10 98:20 142:13 152:11,21 153:8 175:3 January 10:1 116:13 184:23 Jason 5:4 6:24 7:16 215:23 Jeff 120:19 121:8 Jefferson 5:11 jeopardy 115:10 115:11 136:25 Jillian 198:6 job 11:2 12:15 18:6 23:4 24:13 37:4 42:6 119:8 120:5,6 jobs 163:17 Joel 33:16 37:3 38:3 39:15 59:7,11 60:13 60:15,24 194:18 195:15 195:16	join 152:8 joked 119:14 Joseph 17:6 21:16 129:4,9 judge 29:13 44:20 45:11,11 45:25 46:16 47:23 50:1 52:22 53:17 55:9 57:8 58:1 75:14 85:21 86:1 90:21,23 103:10 107:20 111:5,23 114:11 115:25 118:25 121:10,11 129:18 134:21 134:22 135:16 136:25 138:23 139:10 141:11 155:13 156:12 189:24 190:21 198:22 209:1 209:3,21,22 210:15,17,20 210:24 211:4 judge's 138:1 judges 32:24 45:15,22 48:11 48:12,15,24 49:3,18,22 50:12 52:16 80:17 85:9 87:13 90:5,7 90:10,17 91:1,4 119:7 121:3 123:24 138:17 139:19 143:2 143:10 155:16 155:23 156:12 174:16 188:5 189:7,7 196:22 209:5 209:9,15 judgment 171:25
--	---	---	--	---

judicial 10:14,16 12:10 49:18 judicially 191:15 191:20 judiciary 108:2 July 11:20 12:4 12:13 jumping 100:12 192:2 197:15 juried 47:4 jury 47:9 48:1,1 48:2,4,7 82:13 84:17 85:7,11 justify 106:11 Justin 120:21,21 juvenile 13:19 13:22,24 82:10 104:13 104:16,18,21 104:23 105:1,3 105:4,7,8,12 105:13,18,20 106:1,12,16,18 107:5,10,13 108:5,11,20,23 109:7,8,10,19 109:21 111:10 111:14,18,22 112:10,13,19 160:15 168:3 juveniles 105:24 111:2 jwilliamson@ ... 5:7	keep 31:20 36:5 39:6 41:18 56:22 73:21 146:17 146:17 155:7,8 175:1 keeping 39:5 166:7 Keith 136:22,23 kept 129:9 key 73:21 kids 151:22,24 killed 187:4 kind 14:5 17:23 30:15,16,19 44:12 46:25 63:22 78:14 81:9 84:5 85:9 92:9 107:11,12 108:7 148:9 208:13 kinds 48:18 53:7 67:24 77:18 131:18 knew 72:7 199:7 knight 119:14 know 8:8 9:1 12:3,19 14:20 16:2 18:10 20:21 21:3 22:9,11,24 24:11 28:11 29:9 31:25 33:16,20 34:12 35:7 36:12 37:10 37:25 38:1,2,2 38:5,14,20,24 39:11 40:11,11 40:14 41:2 42:19 43:15 44:4,5 48:14 48:15,17 49:6 49:20 50:18 50:19,21 51:13 51:24 53:21	54:3,10,11,17 56:23 58:5 62:22 63:17 65:6,16 66:3 67:12,22 68:18,22 69:7 69:8,10 70:9 70:10 71:1,2,8 71:10 72:11,14 72:17,19,23 75:5,13 76:25 78:9,15 79:13 80:1,9 82:22 82:22 83:7,16 84:12,15 87:2 87:3,4 88:15 90:5,9,11,14 91:2,12,24 92:6,17,24,25 94:4,15,17,19 95:21 96:18,18 98:5,20 99:3 101:6,11,11,21 103:2,8,12 104:4,7 105:2 105:17 106:8 106:15,25 107:18,19 108:3,13,17,18 109:6,11,13,13 109:14,14,15,21 109:25 110:5,5 110:11,25 111:21 112:2,5 114:1,4 114:11,13,16,18 114:19 115:20 115:24 116:7,11 116:18,21 117:1 117:6,8,8,13,18 117:23,25 118:5,10,15 119:7,12 122:10 123:15,16,16 124:22 125:7 125:9,15 127:9 128:1 130:12,17 131:1,2,16	132:10 133:3 134:14,22 142:20 143:9 145:11,15 146:5 146:6 147:2,7 148:20 151:6 151:16,21,23 153:3,11 154:14 154:20 155:6 155:9 156:5 157:6,11,14,17 159:8 161:6,18 162:7 163:11 164:12 166:8,11 166:21,24,25 167:7 168:23 170:9,18,21 171:5 172:11,16 173:4 175:2,6 175:17 178:11 179:19 180:5 180:24 182:7 182:24 183:1 183:15 185:18 186:9,11,18,22 188:19 189:7 189:13 190:1 191:7,7,8,24 192:16 193:5 194:8,19,20 195:2,11,19 196:18 198:25 199:9,10,11 200:15,17,19 202:8,12 208:3,4,11 209:19 210:11 211:2,3 212:14 knowing 117:6 knowledge 83:10 109:10 159:5 161:3 170:11 187:14 193:21,25 212:7 known 98:25 99:7,14 102:12	knows 91:5 Korea 76:19 Korean 76:16,17 76:19 <hr/> L labeled 59:20 lack 70:23 110:1 110:4 language 76:7 76:12,13 109:13 languages 76:5 76:11 77:3,4 lap 21:10,11,15 large 120:3 161:17 165:16 196:24 largely 109:20 119:5 174:3 largest 163:7,7 late 71:25 law 11:1,1,3,6 23:3 37:24 54:16 76:18 92:16,19 108:17 114:21 128:3 158:10 166:11,23 lawful 7:8 lawsuit 150:22 lawyer 12:14,16 14:4,15,19 20:3 26:15 28:4 35:1 50:22 56:10 57:10 62:17 66:24 67:22 67:25 69:6,8 69:22 84:14 87:20 93:17 93:23 97:21 103:19,22 104:24 108:15 113:14,17,18,20 116:2 118:12,17 125:21 148:12
---	---	--	---	--

158:15 175:5,6 175:18,19,24 175:24,25 176:1,7,17 188:18 190:13 209:13 210:25 lawyer's 21:6 62:8 lawyering 81:22 lawyers 11:15,22 12:12,20,22 13:20,25 15:8 17:12,13 19:1 21:9,13,13,22 22:1,1,19 23:9 24:7,7,16 25:7 25:9,9 28:3,5 32:2,3,6,7 33:10,10 34:17 34:17,22 38:22,23 40:25 42:15 42:16 54:13,19 57:20 59:12 61:5 67:6,16 67:23 68:10 69:23 71:8,9 71:10,20,20 75:23 78:11 79:21 81:25 84:21 85:15 86:22 88:3 90:3 94:7,12 96:14 97:19 98:12 100:1 101:8 102:3 103:7 109:18 111:20 113:8 114:19 115:3 118:3 119:3,12 125:14,25 126:7 131:14 132:12,24 133:2,3,4 135:11 140:10 143:5 144:1 151:8 156:8	162:18 164:23 166:21 171:16 178:10,12 180:23 181:4 189:5 190:9 191:4 197:12 199:2 206:14 207:16 209:24 212:7 212:25 lead 57:12 leader 27:9,11 27:24 105:1 168:18 leaders 17:7 18:8 27:16 30:1,20,21 70:19,22 73:6 learned 68:9 leave 19:15,16 19:17 29:5,6 33:17 38:25 115:14 116:17 leaves 20:15,17 21:2 leaving 133:24 134:2 led 189:20 Leer 67:12 leery 37:5,18 Left 19:10 legal 6:20 10:23 11:2 15:19,22 16:19 17:9,14,21 18:6 18:17 23:4,7 31:18 42:3,4 42:12,15 43:13 76:23 85:25 128:16 150:4 152:19 158:18 160:18 166:13 207:14 legally 101:11 158:12 187:7 legislature 200:17	legitimate 138:22 legs 119:15 legwork 108:19 110:21 Leon 89:3 Leon's 91:11 Leslie 135:18 let's 28:9 48:22 97:16 157:17 191:5,12 204:14 211:9 letter 2:14 61:15 98:9 123:9,13 123:19,20 124:1,8,9,10,13 124:19 134:20 141:9,10,13,17 141:21 189:24 190:1,16 193:16,18,22 194:16,21 letters 19:1,2 123:23 124:2 189:21 level 10:4 26:5 26:12,12 27:6 28:25 36:11 41:19 63:19 67:8 70:24 71:13 73:11 88:7 105:19 135:24 164:19 164:19 168:11 170:3,7 196:23 203:21 205:2,7,10 levels 10:2 14:14 26:21 80:11 167:19 Liberties 4:11 6:18 Liberty 120:19 license 49:8 56:24 114:21 148:11 188:15 lie 208:9	life 105:12 208:15 life-changing 87:18 lifetime 117:4 liked 168:20 limes 98:22 limitations 171:11 limited 8:4 limits 188:14 line 71:12 80:13 114:18 154:25 158:6 159:17 184:7 204:12 204:19,23 205:15 207:9 210:10 217:5,7 217:11,16,20 lines 78:1,16 100:7,8 104:5 105:10 108:11 114:7 135:4 149:4 150:21 153:6 154:25 195:13 212:14 lineup 99:14,18 99:24,25 lineups 99:5,8 99:15 liquor 68:23 list 46:5 47:15 55:10 74:16 78:9,14 86:11 91:24 110:9,13 126:5,8,10,15 126:17,21,23 127:5,6,10,17 128:5,7,13,15 128:17,20,20 128:22,23 129:2,4,9,11,12 129:14 153:6 165:7 177:16 196:9 listen 80:5 listened 114:10 literally 19:23	151:23 litigate 90:24 104:21 120:10 litigated 121:4,5 litigation 5:22 6:21 150:13,15 151:17 215:1,18 little 28:19 29:1 42:5 43:11 52:10 64:14 71:22 84:22 85:13 103:16 114:22 134:5 134:16 161:9,10 163:16 176:7 186:4 live 66:13 99:17 99:24 living 208:15 local 36:3 59:4 59:21 60:14,18 60:19,23 116:4 162:4 168:13 170:18 172:9 173:8 184:12 locating 74:24 locked 61:21 Locust 5:23 215:2 logistics 66:16 long 9:19 12:3 14:19,25 20:17 24:21 32:10 34:6,10 108:22 119:8 131:23 140:22 141:2 longer 11:25 48:17 122:20 126:25 158:16 look 21:18,19,20 22:11 29:2 30:12,13,14,15 34:15 40:15 43:23 44:16 72:15 74:2 89:4 90:21,22
---	--	---	--	---

92:3 94:2	68:21 71:14,16	lying 202:3	54:15 114:6	55:24 56:12
108:10 125:14	72:6 73:14		145:8 211:24	57:6 62:10
129:14 140:12	74:4 76:15,15	M	March 9:22	65:23 66:2,6
148:6 151:22	76:22,23 77:8	ma'am 167:16	mark 26:3	67:8,18 68:20
154:10 165:4,5	81:17,18 82:14	177:4	58:20 153:2	71:13,16 74:2
165:8 178:11	84:12 85:9,9	maid 207:10	marked 58:22	75:1 76:1,4
184:23,24	88:14 89:23	mail 19:2	88:21 123:5	79:17 80:1,16
185:3 201:21	90:17 91:3	main 54:3	124:4,6,24	81:3,16 82:10
203:19 204:4	92:12 93:10,10	maintain 177:15	125:1 126:12	83:6 84:7,9
204:14,25	93:12 96:19	maintaining	129:21,23	86:3,10,13
205:24	99:18,20,21	128:20 129:10	136:2,4 137:5	88:13 94:2
looked 9:4,4	102:1 105:10	major 172:14	139:22 192:23	95:19 96:10,16
79:25 127:14	107:11 110:15	majority 22:18	193:12 199:22	98:4 100:5,20
146:14 207:6	117:10 120:2	44:2 139:19	199:24 201:6	101:7,22
looking 30:19	125:19 127:4	155:11	203:1,4	102:10 103:22
32:7 47:19	138:3,18	making 24:19	market 129:8	106:24 108:9
54:20 56:23	145:15 148:14	55:24 56:6	marking 88:20	108:24 110:2
69:23 72:11	148:15,15,16	132:23 143:2	123:8	112:11 114:8,12
106:11,19	148:22 149:16	175:1,2 201:17	marks 27:3	114:18 115:1,8
182:6 186:3	149:17,20,22	man 18:24	Martin 120:20	115:11,22 116:7
192:22	149:22,23,25	manage 35:13	master's 75:8	116:25 117:2,2
looks 33:16,16	149:25 150:23	196:10	match 72:20	118:2,4,24
60:2,10 123:14	150:24,25	management	matches 10:15	120:4,8 122:21
125:3,12 141:16	151:8 152:8	13:5 27:7 34:2	math 19:7	123:16 124:20
looming 80:16	156:12 160:19	35:21 37:6,11	164:13	129:7 132:12
loose 44:13	161:16 165:6	37:14,19 38:14	matter 6:13	133:4 143:22
loosened 96:23	167:3,4 180:6	38:19 67:11	47:22 54:6	144:14,19
96:25	180:7,7,8 181:3	78:12 120:1	85:12 108:3	146:13,16
lose 22:15	181:5 182:9	166:1,4 172:6	113:13 142:17	147:6 148:1,4
102:20	183:2,17	172:23,24	159:10 166:2	148:12,20,24
loses 90:20	184:19 202:19	178:20 180:9	207:12 215:19	149:16,21,23
losing 20:23,24	202:24	180:13 184:2	matters 80:10	150:2,16,18,23
22:6 148:11	208:12 209:15	188:25 196:25	MCRC 2:18	151:11,22
lost 20:23	209:18,23	manager 18:20	130:6,8 132:3	152:22,25
22:12,16,16	loudly 8:14	42:20,24	133:18 151:12	153:7 154:9
lot 9:6 10:17 11:5	Louis 10:24	87:15	194:24,25	155:3,6 158:8
14:5,7,8 16:13	130:18 163:8	managers 38:21	195:20	159:9 160:13
16:14,16 19:15	163:10 195:2	managing	mean 11:4 13:22	160:19 163:7
19:15,16 20:6	low 105:19	180:18	17:12 19:8	163:14 164:9
20:7 21:12	106:8 122:4	mandamus 2:17	22:8,24 24:24	164:22 165:5
28:17 32:1	lower 106:13	125:5	25:14 28:3	165:10 166:4,8
38:8 40:9	134:11	mandated	31:11 32:1 36:4	167:4 168:17
41:5 43:16	lucked 76:18	165:17 186:15	37:22 38:18	168:19 176:16
44:3 45:15	lucky 163:11,13	mandatory	39:13 41:2	176:22 177:11
52:7 55:5	lunch 24:20	24:22,23,23	43:14 44:22	177:21 178:9
62:10,16,16	lunchtime	manner 27:4	45:24 51:23	178:19 179:4
66:12,16 68:9	165:21,24	30:25 34:19	52:4 53:5	180:6,7,10,16

180:22 182:3 182:21 183:2 183:12 184:18 184:23 186:9 186:19,20 187:3,12,21 188:6,15 190:8 191:25 192:1 193:4,8,10 194:7,17 195:14,19 196:12 197:8 197:10 202:19 204:21 206:12 208:7,7,12,16 209:2 210:3,9 211:15 meaning 122:19 175:19 means 21:9 32:1 34:13 54:7 66:9,10,11 94:5 112:18 meant 188:8 mechanism 178:16 208:5 medical 49:12 meet 17:18 27:15 28:8 61:6,7 68:18 72:10 87:11,19 101:22 110:12 152:20,20 189:10 196:22 meeting 19:14 24:9 35:2 55:6 61:15,18 61:22 76:2 85:24 92:9 133:2 175:7 193:10 meetings 29:12 61:16 92:8 119:13 Megerman 17:6 21:16 129:4 member 140:9	151:25 152:1,2 members 18:11 memo 117:1 memorandum 84:12 memorized 172:8,10 memory 212:1 mental 96:20 97:2 98:10,18 98:24 112:12 115:14 144:19 mentals 96:23 mentioned 11:9 22:5 28:2,16 29:14 31:3 44:5 55:21 61:5 64:13 68:16 74:17 74:20 75:20 103:18 119:16 140:3 142:3 154:21 165:20 168:10 171:6 193:15 212:10 mentor 27:14 mercy 133:5 merely 171:24 merged 105:15 Mermelstein 125:8,10 mess 106:15 158:12,13 met 9:1 85:20 107:21 118:12 122:15 189:24 190:2 196:3 meth 149:23,24 method 96:18 methods 165:14 Michael 117:1 195:7,8 196:17 micromanaging 87:14 mid 170:3 mind 39:5 56:5 mine 37:22	121:9 131:4 198:9 minor 172:12 minute 123:1 145:19 minutes 9:2 153:18 208:19 misdemeanor 82:23,24,25 171:12 misdemeanors 13:17 14:7 32:17 44:3 82:21 86:20 147:18 171:7,17 missed 114:4 missing 208:11 Missouri 1:1,6 2:13 4:1,6,12 4:13,15,17,18 5:8,10,11,15,17 5:23 6:5,14,16 6:18 7:4 9:15 10:22 49:17 54:1 83:9 89:2,8 114:9 119:12 121:13 130:3 135:20 146:3 149:12 156:16 163:4 164:4 192:24 194:14 214:4 215:3,7,9,10 217:2 mistrust 62:17 MO 5:21 6:4 215:22 mom 151:22 156:4 moment 28:17 123:11 128:11 173:14 201:22 Monday 45:1 134:21 139:13 139:13 190:2 money 19:16 35:16 36:4,7	36:18 67:5 77:13 109:5 156:6,8 170:15 170:16,20 177:24 183:22 184:25 185:19 185:21 209:16 211:23 money-wise 75:18 monitor 132:11 132:21 monitoring 132:9 137:1 154:6 180:14 month 24:14 46:25 81:3,3 122:13 162:20 190:6 195:11 monthly 30:11 months 26:17,18 32:12 49:19 50:11,12 53:15 53:17,20 54:20 62:22 64:5 79:2 81:23,23 122:13,14 167:2 176:5,6 morning 7:12,13 174:5 motion 2:21 79:22 99:3 100:5 101:24 102:21,22 121:9 135:11 137:3,9,16,18 137:21,24,24 138:2,6,8 139:16 161:10 197:16 motions 30:15 71:18 79:7,17 80:18,22 81:1,1 81:14,14,19,19 82:1 110:24 121:6 125:13	187:23 motivate 33:21 move 23:19 25:22 26:2 50:8 57:9 60:22 71:10 91:10 103:3 117:18 157:6 161:16,20 174:19 195:22 210:4 moved 23:18 142:1 154:12 211:24 movements 8:16 moves 50:8 109:22 moving 91:4 MSPD 5:14 7:1 9:23 10:13 11:2 12:9 27:12,22 30:10 33:8 59:21 60:10 61:6,7 78:6 121:16 125:17 172:10 multiple 38:5 58:6 115:23 120:4 144:15 150:20 157:15 165:3,6 181:18 182:1 183:15 189:11 197:12 multiple-count 183:4 Munday 89:3,21 Munday's 89:11 murder 21:22 36:1 48:3 86:18 131:21 210:5,5 murders 40:11 149:17 164:16 Musgrave 124:14,15
--	---	---	--	---

N	nerd 166:11	normal 163:15	numbers 36:3	127:18,19
N 2:1 3:1 5:1	Nevels 136:21	normally 26:17	160:2 164:10	134:21 141:10
N-A-C-D-L	136:22,23	159:21,21	186:3 187:10	141:21 167:1
198:21,25	137:2 138:19	209:4	196:23	offenses 83:2
NACDL 198:21	142:15	notarized	numbers-wise	offer 49:14 63:8
name 6:19,20	never 35:2	215:17	122:6,7	74:5 85:22,23
7:16 26:20	37:12 41:9,9	notary 4:14 6:5	O	86:5,12,17,18
139:18 146:2	63:7 83:21,21	215:16 216:18	O 3:1	88:2 89:25
165:4 195:2	90:8 99:7,13	notice 20:21	O'Malley	90:6 91:6,7
216:9 217:1,2	102:12 105:17	60:5 65:24	198:22	191:12
named 14:13	106:14 121:1	65:25 66:9,18	oath 7:24	offers 28:10
National 199:1	150:22 157:14	102:23,25	object 8:3	47:15 85:14,19
natural 103:8	168:19 181:1	103:20 185:1	objection	86:4,22 89:18
naturally 20:6	185:16,24	202:13	136:15	90:2,4 91:2,8
necessarily	209:11 211:6	noticed 78:25	obligated 86:4	132:15 175:4
43:18 172:9	211:12,17 212:4	noticing 66:10	obligation	office 5:10,15
necessary	new 5:6,6 21:22	Notification	85:25 140:7	9:18 10:6,15
63:23 64:18	22:18 23:2,2	2:18	obligations	10:20,25 11:24
64:23 65:1,5	23:9,14,20	November	31:18 56:13	12:9,9 13:12
78:23 81:14	25:9,15 102:21	137:3,22	89:12 191:1	14:11,13,20 15:1
82:1 93:7	102:22 111:22	140:17	observation	16:1,9 18:18,20
143:21 163:21	159:11 166:20	number 6:14	113:8,8	18:21,22 19:4
168:23 169:23	166:22 167:10	15:23 19:17	observations	20:15,17 21:18
170:2 216:8	169:15 172:1,18	32:24,25	110:7	23:14 25:2,20
need 33:22	185:1	35:5 40:5,15	obviously 20:4	25:25 29:8
36:9 40:22	newer 72:16	40:17 42:1	21:21 27:6,19	31:16,17 33:8
42:2 71:25	news 165:10	43:23 44:15	29:8 41:21	33:10 34:7,17
72:13 89:13	newspaper	45:12 54:24	85:6 92:16,22	35:14 36:2,9
115:13 135:22	150:24	65:2 69:4	98:24 124:20	36:18 37:1
146:5 169:14	nice 116:19	71:18,19 72:23	142:11 170:21	38:4,11 39:1,2
177:8 178:4,8	138:2	74:10 75:16	177:20 192:16	39:5,10,10,21
186:4 198:5	Nifong 5:16	94:3 95:1	occasionally	39:24 40:10
204:10	215:8	96:16 97:9	30:2 111:10	42:7,19,24
needed 42:2	nightmare	106:15 113:11	194:8 195:8	43:21 51:21
72:7 77:5	178:23	115:12 118:14	occasions	53:8,13 55:23
needs 28:15	nine 19:5,8,9	122:9 123:25	138:12	56:10 57:2
182:13	22:23 50:12	125:13 130:22	occur 46:14,15	59:13,21 60:19
negative 52:7	54:20 62:21	132:7 135:11	47:9 48:19	61:15 62:7
90:23	155:15 162:23	146:4 151:16	61:10,11,13	64:17 66:14
negotiate 88:4	167:2	155:6 163:20	111:4	69:15 70:3
88:5 93:6	non-appeara...	164:8,12 165:4	occurred 107:18	71:4 73:9,20
negotiation	139:10	181:14 190:11	occurs 46:13	75:10 78:17
88:7,10	nonprofit 130:11	204:3,5,6,14	72:3 146:23	82:5 83:11,24
negotiations	Nonverbal 8:6	208:8 213:4,9	184:6	86:15 88:3
47:16 92:22	136:10	numbered	OCDC 142:5	90:4 93:6,20
neither 214:9	Nope 104:19	204:16 205:1	October 59:16	94:12,22 96:1
	171:13			96:9 97:12

99:5 101:19	22:11,14 38:5	98:2 99:15	88:2 95:19	144:4,7 184:21
102:17 103:18	38:6 39:14	101:16 102:9	111:14 210:21	orders 86:8
103:19 104:17	65:11 117:19	102:24 104:12	ones 24:24,25	97:16 138:25
105:13,21,23	119:24 122:11	105:23 106:7	92:20 186:16	143:10,22,24
106:2 108:12	122:21,23	106:23 108:6	open 16:2 20:9	145:6
108:21,23	131:8 148:1	109:6 112:6,18	25:2 30:13	organizational
110:7,23 112:10	153:12 163:4,6	113:2,23	53:22 114:20	27:12
113:3,17,18	163:12 164:4	123:18 124:15	142:24 160:24	organizations
114:24 115:12	176:21 187:5,9	125:24 126:9	163:13 164:11	150:12 151:3,4
115:16 116:5,23	190:11	127:19 129:6	opening 83:11	151:5,6,25
117:17 118:10	official 171:1	129:20 130:20	83:15,21	152:8 198:20
118:20 122:5,9	officially 102:17	131:5 133:22	operates	organized
124:22 126:1,5	oh 26:6 29:19	134:12,12	183:20	152:3 166:8
129:3 131:3	38:24 52:20	137:12 138:7,11	operating	original 3:6,6
132:8 138:18	59:25 65:19	139:24 140:19	131:22	215:13
139:2 140:4,13	65:21 69:10	141:9,18,21,23	opinion 19:11	out-of-custody
141:3 142:25	70:20 71:15	143:16,20	37:17 69:19	97:2
144:9 146:23	72:18 73:2,4	144:22 145:10	83:23 93:5	outcome 214:15
147:3,8,24	90:7 119:4,4	146:15 147:22	94:21 97:7	outcomes 85:4
148:21 152:14	120:12,24	152:16 157:5	109:8 113:2,6	109:14,14
153:4 162:21	151:4 164:22	157:12,12	180:23 206:2	outlets 151:5
165:20 170:11	185:15 198:8	159:4,6 160:3	opioid 149:25	outreach 133:10
173:8 175:4	200:4 204:5	164:11 167:22	opportunity	outright 158:9
177:15 178:14	204:5	168:3 171:14	52:5,5 85:9	211:12 212:1
178:16,24	okay 7:20 8:5,9	172:22 173:3	155:19	outside 18:6
185:21,25	8:10,21,22	174:1 178:21	opposed 8:15	111:7 116:4
186:20 187:10	9:13 10:6 12:18	179:15 184:11	147:19 171:12	155:20 176:14
187:12 190:25	13:11 14:22	186:8 188:19	173:8 176:15	189:22
192:14 193:9	17:17 18:16	188:20 194:11	181:10 183:4	outstanding
196:8 200:11	26:9,23 27:18	195:23 197:24	opposite 183:2	178:15
200:13,14	35:13 36:22	198:8,17 199:3	optimal 40:8	over-reporting
201:18 206:2	36:25 41:4	199:21 200:19	option 39:8	181:2
207:19,23	45:6 47:13	200:23 201:8	97:5 99:1	overflow 186:10
208:22 210:19	48:18,23	201:11,21	186:18	overhead 182:4
212:8,22	50:16 55:17	202:22 203:3	options 111:2	overlap 42:5
215:7	56:4,25 57:22	203:19 204:15	122:1	overload 9:4
office's 89:12	58:1,11 59:6,14	204:25	order 27:9	22:11 55:1
145:12	60:12,21 61:1	205:12 206:17	75:24 94:1	56:15 95:3
office-wide	63:4 64:3,13	207:25 212:19	96:11 127:3,6	162:15 190:13
43:6 189:12	67:15 68:15	213:3	128:8 135:3	overloaded
officed 195:1	69:14,25	old 177:22	135:22 139:10	22:14 122:12
officer 80:6	71:22 74:8	185:2 195:17	142:9,9 143:12	overreacting
98:7	75:20 77:11	omission 149:2	174:16	119:1
officer's 80:4	79:4,6,20	on-the-scene	ordered 32:25	oversee 178:15
officers 88:16	83:2,5,10 87:7	100:2	97:11 98:13	oversight
119:20	92:5 93:1,15	once 9:9 24:14	210:23	132:19 180:20
offices 4:11	95:22 97:25	57:1,1 72:12	ordering 139:20	overwhelmed

38:16 115:6,8 overworked 116:10	196:25 participate 131:12 198:23 participated 130:13 particular 35:10 124:9 133:11 149:11 150:22 152:15 159:25 161:1 162:21 165:2,17 175:12 178:25 179:24 181:8 184:6 187:2 188:2 189:2 197:21 208:4	49:4,5,6,6,7 50:19 58:6 62:2,21 64:22 65:18,19 66:4 67:4,19 70:11 71:17 72:24 73:1,7,13,15,23 74:4 75:16 76:15 77:8,23 77:24 78:1,3,5 78:12,14,21,22 79:11 82:8 87:16 88:14,15 91:2,5 93:9 98:19 106:12 112:4,4 115:12 115:13,13 116:12,17 117:3 118:5 120:3 126:11 127:5,9 127:11,15,20 128:5,7,22 129:11,11,12 133:24 148:2 150:25 151:9 151:10,11,16 152:23 153:12 155:10,15 158:7 159:7,11 161:13 162:23 164:15 165:4 166:6,9 167:10 168:17,19,22 168:25 169:2 170:4,24,25 173:8 174:8,11 174:16,17 175:1 175:21 177:24 180:8,19 184:15,19 187:5 192:18 196:18,20 197:9,9 202:15 206:3 206:8 207:21 208:8,10,12,17 people's 21:19	45:16 percent 12:16 35:3 43:14 47:3 65:6,7,12 67:21 70:17,17 154:24 157:3 157:8 163:15 192:1 percentage 44:1 64:16 122:11 128:1 157:11 182:24 performance 25:17 27:1 30:5 33:9 34:21 period 21:5 23:10 34:13 165:22,25 179:15 periods 34:12 179:14 perjury 216:10 permanently 61:21 permissive 186:15,18,22 permitted 114:24 perpetuity 142:19 person 13:2,9 23:15,20,24 24:5,7 28:4 33:22 48:10 60:24 66:17 66:17 70:21 70:22 94:4 96:4 97:15 98:8,9 100:22 103:13 106:14 126:20 128:11 129:4 140:25 153:25 161:4 161:13 168:20 172:13 176:9 177:22	208:23 209:7 personal 69:20 69:21,21,22 113:7 135:25 153:16 170:11 182:18 personally 25:19 86:14 87:22 129:1 134:25 135:2 135:13 139:9 139:19,20 142:22 143:10 143:12 169:22 178:3,22 182:4 189:24 210:4 211:8,11 212:3 personnel 184:7 184:8,9 perspective 84:17 128:19 persuasive 49:13 pertaining 130:2 pester 34:10 petition 2:19 136:13 Petsch 1:11 2:3 4:9 6:13 7:7,12 9:13 58:19,22 88:21 123:5 124:4,24 129:21 136:2 137:5 139:22 143:24 199:22 201:6 203:1 215:13 216:5 216:12 217:1 phone 61:15 77:25 phones 18:24 208:9 phonetic 76:14 Photos 99:19 physically
--	--	--	---	---

pick 50:10	85:14 94:8	pools 38:8	203:22 205:2	98:11 111:20
picked 51:14	please 6:22 7:6	poor 154:3	205:7,22	166:22 187:18
95:20	44:13 89:15	207:12	208:17	presentation
pictures 99:18	203:5 215:12	pop 12:7	power 36:15	196:13
99:21	215:15,17	popping 92:12	practice 19:15	presentations
pills 149:25	pleasure 21:14	pornography	25:17,23,23	197:7
place 31:14	pled 65:3 93:10	83:7	83:20 119:7	presentence
104:5 136:24	103:9 174:14	position 13:5	164:4 176:11	100:15
162:5 192:3	211:22	20:18 23:18	190:23	presiding 29:13
202:5	plenty 115:3	34:9 180:17	practiced	55:9
placed 95:22	plus 31:25	positions 20:23	190:23	press 150:17
95:23 125:16	point 33:2	22:10,12,13,16	practicing 14:20	pressure 80:15
places 67:24	44:19 46:8,20	22:17 23:19	15:1	116:15
116:20 147:4	47:8,10,23	27:7 163:12,21	pre 48:21	pressuring 87:5
152:12 155:10	50:25 53:12	positive 80:3	predictable	presumably
plain 189:6	55:7,9 56:2,9	possession	31:10,13	193:6,7
Plaintiff's 193:13	58:13 60:22	131:20 149:21	prediction 85:7	presume 65:4
193:24 194:11	66:5 81:18	possibility	prefer 27:19	175:9
207:1	86:24 102:16	66:25 72:25	preferred 96:17	presumed
plaintiffs 1:4,12	108:18 111:16	possible 20:22	preindictment	205:23
4:4,18,19 5:3	118:11 134:18	27:4 34:20	48:21,22,23	presuming
6:2,25 7:9,17	138:16 146:5	50:16 72:17	prelim 46:17,18	92:23 164:14
192:23	169:5 170:24	78:8 183:8	46:22,24 47:4	presumption
plan 18:12,13	194:18 202:17	possibly 56:23	47:14,22 48:5	203:23 205:3
77:1	pointing 73:16	post 20:19	48:8,9 49:4,21	205:8,14,15
planned 75:17	pol 59:24	post-conviction	51:9 57:8,14	pretrial 48:19
plant 174:24	police 68:16	14:15	85:19,21 86:16	50:9,10 80:22
Platte 11:18	80:2,3,3,6	post-litigation	148:6,8 162:19	80:25 81:14
play 15:21 33:8	88:16 99:11,13	90:25	175:18,24	82:1
97:20 100:18	175:22 176:8	post-traumatic	prelimed 162:13	pretty 7:20
159:24	policies 39:4	116:22	preliminary	37:13,13 48:13
played 65:17	59:4,5 60:9,11	posted 89:6	46:10,13 57:3	53:21 76:15
plea 47:18 85:14	60:16 89:2	204:11	57:9 73:11	79:9 87:18
85:23 86:4	91:18 162:5	postpone 55:13	prep 70:11	89:16 103:25
88:2,4,10 93:7	168:13,14	postponement	110:16	106:8 107:2
93:13,17 101:18	172:14,18	55:10 126:8,9	preparation	160:22 162:7
103:1,3,6,15,17	210:7	126:21,22	66:19 70:24	163:15,18
132:15 158:14	policy 2:12 37:1	153:6	150:9	167:4 172:5
plead 50:17	37:7,10 59:21	potential 99:11	prepare 8:23	178:10 186:6
74:6 85:16	60:6,7,19 87:9	177:16	8:25 83:25	187:21
87:5,10,20	88:14 168:17	potentially	84:3 85:1,5	prevalent 77:4
173:16 174:7,17	171:19,22 172:1	41:23,24 52:7	108:8,14 110:7	primary 165:5,7
174:20	172:4,9,9,10	147:19 187:14	prepared 70:15	165:9
pleading 88:14	173:7,8,11	potted 174:23	preparing 84:5	print 198:6
91:5 174:11	174:10	poverty 152:24	present 6:22	printed 45:14
pleads 101:16	pool 36:7,18	153:11,22	57:3,5,20,24	prior 10:21 11:3
pleas 49:5	38:9	154:25 158:6	58:7 69:6	12:13 53:19

88:10 97:12 114:23 190:3 215:18 prioritized 128:23 priors 46:5 prison 184:19 private 19:15 96:17,23 97:6 98:5,8,15,24 107:25 129:16 148:5,7,8 157:18 158:9 158:25 159:11 160:4 164:4,8 203:24 205:10 206:4 207:19,21 210:12,22 privilege 62:5 81:11 89:19 pro 107:11,13 112:4 174:20 probably 12:16 18:7 28:12,13 29:5 32:12 37:16 39:9 40:13 58:6 63:7 68:17 70:17 71:13 78:11 85:20 86:17,18 95:2 95:18,21 104:23 110:2 111:24 115:11 127:3 130:23 142:18,24,24 148:12,20 160:2 170:25 171:3,20 172:13,14,21 176:5 189:10 190:3 192:1 207:19 208:14 210:13 probation 13:25 29:7 31:6,8,9	31:12,24 32:5 44:6 54:5 100:23 103:4 103:10 134:23 136:24 142:17 144:16,18 145:8 158:23 168:1 175:4 problem 53:7 62:11 166:24 174:13 problems 114:13 114:14 185:4 procedural 56:25 procedure 44:18,18 171:19 procedures 59:5 60:9,11 60:17 89:2 91:18 proceed 173:23 174:2 185:10 189:21 proceeding 53:2 proceedings 57:13 108:8 111:4 209:25 process 15:13 18:4 29:19 47:18 53:13 79:10 97:20 97:20 98:3 100:19 101:1 134:6 152:17 153:20 161:7,11 162:4 185:12 185:15 187:13 194:2 produce 65:18 65:19 66:15 produced 4:9 7:8 175:12 professional 2:15 10:21,23 61:23,25	189:5 program 111:15 111:19 131:7,10 131:22 132:2 133:18 prohibition 2:17 2:20 125:4 promise 3:3 201:15,24 promote 26:16 128:4 promoted 25:16 26:18 27:4 28:24 34:18 promoting 28:23 promotion 26:21 promotions 28:25 29:18 29:19 33:24 prompt 54:14 promptly 54:13 promptness 54:12 promulgate 171:20 promulgates 200:12 property 153:17 prosecuted 148:22 150:6 prosecutor 46:1 47:25 49:14 89:23 161:3 prosecutor's 66:14 88:3 92:23 147:3 148:21 190:25 prosecutors 51:11 86:7 87:14 92:13 146:17 183:7 protect 89:18 91:12 protection 175:5	prove 73:10 provide 43:1 63:22 117:17 131:17 145:12 188:8 196:8 provided 75:21 76:4 104:20 191:16,20 210:14 psych 97:11 psychiatric 96:6 public 4:14 5:15 6:5 9:15,25 10:3,3,22 15:25 46:20 51:1,9,10 53:18 58:7 84:12 100:18 107:22 107:24 108:4 111:25 114:9 116:4,9 126:1 147:8 149:12 150:20 152:5 156:17 157:25 158:4 159:17 160:7 165:18 166:17 188:13 191:14 200:1 201:14 204:9 205:18 208:22 209:13 215:7 215:16 216:18 pull 162:8 pulled 193:10 pulling 119:2 177:21 punt 170:5 purely 70:8 pursue 74:12 purview 148:19 push 38:14 73:7 pushing 66:1 put 12:19 45:12 45:19,20 50:7 55:10 89:1	103:10 111:8,10 115:9 120:24 177:7 181:9,9 181:17 188:14 202:13 putting 106:12 115:10,10 128:20 <hr/> Q qualified 53:21 77:2 160:23 qualifies 159:17 qualify 15:25 47:20 153:2 154:4,13 160:1 209:14 qualifying 61:12 160:20 quality 34:23 quantify 64:15 72:4 quashed 139:16 139:17 question 8:5,8 8:9,9,15,19,21 41:9 58:24 67:12 77:8 95:11 101:5 117:13 147:16 147:21 157:12 158:21 165:1 169:21 170:9 172:19 207:25 208:1 212:12 question/ans ... 20:8 questioning 101:1 210:7 questions 7:21 7:22 8:4,13 39:22 44:17 45:20,21 55:17 57:1 102:13,14 120:24 132:14 133:12 146:4
--	--	--	--	---

156:11 172:22 198:18 206:25 209:18,18 quickly 139:3,14 quit 114:17,20 quite 91:20 134:13 143:13 146:8 152:2	213:14 215:15 216:6 217:5,8 217:12,17,21 reading 19:24 89:25 114:4 189:6 ready 211:1 real 24:15 31:11 118:23 128:15 Realistically 51:21 realize 71:25 72:18 79:21 204:2 really 20:25,25 21:13 28:4 31:15 38:7,21 38:21 39:2,3,4 40:7 43:1 45:15,23 47:5 50:3 51:25,25 52:9,18,22 60:24 64:6,19 64:19 67:8 70:19 76:5,17 78:11,22 84:18 85:12 90:23 90:24 94:10 115:1 119:6 121:4 131:8 136:24 142:2 142:3 144:5 145:4 148:3 149:18 152:6,6 152:21 153:7 174:8,21 175:1 175:4,6 176:11 179:4 182:3 183:7 188:8 194:25 204:3 206:14 209:3 rear 191:8 reason 56:12 96:2 134:2 144:12 190:5 217:6,10,14,18 217:22	reasonable 41:7 54:12 163:24 164:13,14,16 reasons 77:13 77:16 79:23 88:13 104:10 reassign 21:8 reassigned 132:3 reassigning 142:25 recall 77:12,14 77:16 89:20 92:7 99:24 101:13 136:20 179:6 182:10 182:10,11 207:4 recalling 183:21 receive 23:13 78:18 143:12 154:1 155:1 164:25 193:2 received 94:12 140:19 receives 140:25 receiving 30:11 149:9 193:1,4 204:9 205:17 recess 58:17 95:8 123:3 198:13 recite 187:21 200:9 recognize 59:1 88:23 123:9 124:7 129:24 recollect 180:12 recollection 181:21 194:9 recommend 68:20 177:21 recommenda... 46:6 recommended 45:13 record 6:10 8:16	8:17 24:19 52:16 58:14,16 58:18 85:22 89:25 91:14 95:4,7,9 122:25 123:2 123:4 135:10 135:13 145:18 145:20,21,22 191:9 198:10 198:12,14 199:6 213:13 recorded 6:12 records 49:13 90:10,18 91:13 143:2 146:17 146:18 red 114:10 reduced 214:8 reductions 51:25 refer 10:10 32:14 34:3 referenced 25:12 references 19:25 referred 137:9 141:10 referring 136:5 201:19 refuse 67:10 114:25 refused 67:9 refusing 122:1,5 197:13 regard 128:17 151:17 regarding 89:12 145:11 regardless 107:3 region 75:12 regional 140:8 regular 195:17 regularly 35:6 62:12 70:6,7	70:14 79:9 132:11,14 199:17 200:10 reject 128:4 156:20 157:1 158:8 159:25 rejected 157:4 158:9 192:12 rejection 154:20 related 92:6 100:2 156:5 157:13 214:10 relates 121:24 relationship 37:14 62:12 63:6 81:24 172:6,25 175:22 210:9 relative 214:12 relatively 22:19 relaxation 166:8 relentless 116:15 relevant 7:21 158:4 188:6 relief 120:7 188:8 relieved 133:19 remain 52:24 90:15 remember 7:23 19:23 99:23 105:15 106:11 109:2 150:7 163:25 181:6 181:22 182:3,3 193:1,4 212:6 remembering 195:2 remove 126:20 129:12 render 216:8 reopened 38:10 repair 63:7 repeat 114:19
R R 5:1 Ramsey 2:5,7 5:10 7:3,3 145:18,24 146:2 152:13 192:15,21 195:21 197:24 198:19 206:18 206:21,24 208:18 ran 39:20 rare 51:13 61:24 171:2 rarely 99:17 rash 206:7 rate 19:4,19 21:25 79:1 154:20 157:9 162:23 163:10 177:7,11,12 ratio 108:13 reach 27:5 151:16 reached 164:8 reaches 158:5 195:14 reaching 172:23 190:4 reacted 90:7 reaction 116:3,6 147:6 read 9:2 89:13 92:3 124:1 175:21 202:1 202:18,20,25 203:20 204:3 204:18 205:1				

rephrase 8:9 14:18 53:10,12 80:24 97:13	175:20 representing 51:18 109:8,19 144:6 145:4 160:20 161:9 174:12 210:2	residual 13:8 resign 115:16 resigned 19:9 115:18,21 resolved 116:12 resource 31:15 31:17 75:17 77:16 94:11 125:25 132:12 132:21 182:9	result 115:17,18 137:16 202:10 resulted 95:16 results 82:18 98:25 resume 103:1 resumes 19:24 retain 74:15 retained 73:19 retainers 95:22 95:23 retaining 212:22 return 33:5 215:17 Returning 176:24 Reverse 37:12 review 25:19,24 29:15,21 33:23 43:17 110:23,23 111:19 123:11 202:23 reviewed 25:20 123:18 reviewing 69:23 124:11 reviews 25:24 43:15 54:10 revocation 14:1 158:23 ridiculous 41:25 right 10:10 13:23 15:10,11 16:2,3 16:24 19:25 22:7 23:3 24:9 33:15 34:5 40:22 41:21 42:8,9 43:4,20,23 44:6 49:1 52:24 53:11 56:3,9,21 57:15,18 58:4 60:5 63:24 72:2,5 73:10	83:5 90:15,15 90:16 92:18 101:3,10 102:2 103:2,24 105:1 107:23 108:1 112:23 113:16 121:25 125:18 126:22 127:10 130:4 132:6 133:7,16 134:24 140:18 141:8,23 142:14,21,23 143:16 144:2 144:24 145:1,3 145:8,16 146:11 147:15 153:5 154:3 157:20 161:2,12 165:19 167:12 168:12 171:9 173:2 175:14 182:17 187:19 192:14,20 193:5 194:15 199:3 201:8 202:14 205:20 206:1 207:16 209:15 212:17 213:7,11 rights 53:1 90:14,24 rise 205:3,8 risk 45:18,22 148:11 rob 148:16 robberies 149:20 robbery 183:12 role 15:21 33:8 34:16 96:24 97:19 100:19 room 51:1,10 61:22,25 98:11 103:16 118:8 rooms 61:20 rotated 13:1,6
report 68:16 80:2 100:15 100:22 101:9 108:16 119:12 reporter 4:14 5:21 7:5 8:12 58:12 78:15 205:5 214:1,4 reporter's 6:19 reporters 52:17 73:23 78:9 reports 29:22 75:13 108:14 175:22 176:8 represent 7:16 97:15 103:13 112:5 113:3 129:17 136:23 142:15,18 146:3 148:24 149:2 150:19 157:25 206:3 206:15 representation 31:19 55:13 62:6 63:22 70:2 74:17 81:12 84:24 102:16 103:15 132:9,20 143:3,8 144:21 145:12 147:5 154:1 155:1 158:6 159:18 161:13 167:11 172:16 173:14 175:9,15 176:6 176:15 190:20 represented 12:6 111:15 136:19 144:16 151:7 159:2	request 17:13 30:6 35:23 46:20 47:22 48:6 50:1 71:5 71:6,12 76:2 77:12 78:19,21 78:23,24 94:1 96:15 97:8 168:25 177:6 177:6,9,10,14 185:6,13,24 192:8 211:6,8 211:11,13,19 212:2,4 requested 68:18 117:23 Requesting 2:21 requests 16:10 17:21 29:4,4,6 35:25 41:13 46:24 54:14 71:9 73:8 74:4 77:15,18 78:2 79:1 138:13 170:11,23 171:1 212:9 213:5,9 require 31:10 109:9 required 7:22 8:5 11:25 25:7 57:11 69:17 requirement 30:9 61:6,7 65:24,25 132:18 requirements 27:23 56:5 requires 20:6,7 research 177:17 reserved 6:7	respect 61:7 91:1 95:17 respond 54:14 90:19 116:23 119:24 138:7 responded 141:19 response 8:6 66:12 118:21 122:22 134:14 136:10,13 139:15 140:20 140:23 141:13 143:17 responses 66:13 120:17 responsibilities 28:20 Responsibility 2:15 responsible 103:23 105:2 105:3 rest 143:5 restitution 49:9 49:12	result 115:17,18 137:16 202:10 resulted 95:16 results 82:18 98:25 resume 103:1 resumes 19:24 retain 74:15 retained 73:19 retainers 95:22 95:23 retaining 212:22 return 33:5 215:17 Returning 176:24 Reverse 37:12 review 25:19,24 29:15,21 33:23 43:17 110:23,23 111:19 123:11 202:23 reviewed 25:20 123:18 reviewing 69:23 124:11 reviews 25:24 43:15 54:10 revocation 14:1 158:23 ridiculous 41:25 right 10:10 13:23 15:10,11 16:2,3 16:24 19:25 22:7 23:3 24:9 33:15 34:5 40:22 41:21 42:8,9 43:4,20,23 44:6 49:1 52:24 53:11 56:3,9,21 57:15,18 58:4 60:5 63:24 72:2,5 73:10	83:5 90:15,15 90:16 92:18 101:3,10 102:2 103:2,24 105:1 107:23 108:1 112:23 113:16 121:25 125:18 126:22 127:10 130:4 132:6 133:7,16 134:24 140:18 141:8,23 142:14,21,23 143:16 144:2 144:24 145:1,3 145:8,16 146:11 147:15 153:5 154:3 157:20 161:2,12 165:19 167:12 168:12 171:9 173:2 175:14 182:17 187:19 192:14,20 193:5 194:15 199:3 201:8 202:14 205:20 206:1 207:16 209:15 212:17 213:7,11 rights 53:1 90:14,24 rise 205:3,8 risk 45:18,22 148:11 rob 148:16 robberies 149:20 robbery 183:12 role 15:21 33:8 34:16 96:24 97:19 100:19 room 51:1,10 61:22,25 98:11 103:16 118:8 rooms 61:20 rotated 13:1,6

rough 70:18	Ryan 5:20 6:20	68:9	34:16 35:19	43:25 73:18
roughly 43:11	<hr/> S	scenes 67:17	38:16 47:6	88:15,17 108:6
43:25 127:20	S 2:10 3:1 4:13	schedule 45:10	59:20 64:7	108:9 109:3
rounds 20:20	5:1,21 6:4	109:24 134:10	69:13 73:25	116:3 119:9
route 80:20	214:3,18	scheduled 28:8	74:3 87:16	127:19,23
138:24 169:18	215:22	schedules 21:9	96:11,12 129:8	131:7 132:22
210:19	sadly 101:6	21:19	142:3 147:18	141:2 146:11
rudinely	Saint 10:24	school 11:1,1,3,7	147:24 158:18	148:10 153:13
103:25 150:5	130:18 163:8	23:3	201:23	154:19 163:3
RPR 5:21 6:4	163:10 195:1	scramble 72:19	seeing 30:9	163:14,21
214:18 215:22	salary 27:24	screen 15:22	31:22 35:5,6	165:13 170:8
rule 53:23,25	Salvation 75:6	16:6 46:21	62:11,23 63:1	171:5 176:12
54:1,1,22 55:1	sample 196:17	53:18,19	81:23	179:2 191:23
56:5,14,18	sanctions 71:10	55:23 126:11	seek 173:1,22	191:25 200:6
96:22 114:2	saving 170:20	152:22,23	seen 50:22	208:6
121:3 124:22	saw 110:2,3	159:11 172:13	64:5 124:8	sensical 176:11
134:25 135:12	151:13 193:6	screened	149:9,13	sent 12:7 33:18
135:21,25	saying 47:9	126:13 156:1	166:16 168:24	47:19 59:9,12
138:4,22	56:4,10 63:10	screening	170:4 193:7	60:6,13 92:2
140:11 150:17	63:11 77:10	55:21 153:20	200:23 203:7	105:2 117:1
151:17 154:25	96:21 102:13	159:7	segue 104:15	123:23 124:2
159:17 172:17	103:5 106:11	screwing 185:15	select 111:12	131:3,24 135:2
188:6,9 189:9	108:4 114:11	se 174:20	180:4,4	141:1 142:8,8
189:18 191:2	115:23,25	search 153:16	selection 134:6	143:12 155:9
196:14 210:12	135:3,22	153:17 165:9	self-reporting	176:3 181:24
210:13	136:8 143:24	165:10,12,14	143:18	189:23 193:3
rules 2:15 54:6	158:10 163:25	searched 165:11	self-care 166:12	193:4 194:18
55:11 71:7	174:11,22	second 12:15	self-harm 115:13	195:9 207:3,7
167:6 189:5	182:5,6 186:3	24:15 30:2,21	self-inflicted	207:14
199:17 210:10	188:13 191:9	30:21,23 51:14	190:19	sentence 202:1
run 32:6 33:13	212:15	59:17 67:23	self-monitoring	sentenced
38:12 112:3	says 7:9 47:21	70:22 95:5	154:7	90:21
150:25 153:16	55:1 65:19	97:6 105:4	self-report	sentencing
153:17 183:25	68:19 89:16	107:20 113:9	140:4,7	75:7 84:6,8,8
184:3 186:1	103:10 115:25	137:20 138:8	self-reported	84:11,25 85:1
running 162:11	118:16 128:3	156:19 176:1	139:3	85:8,11 100:22
runs 147:3	135:1 153:15	197:16 203:19	self-reporting	101:8 102:22
rural 38:4,6	153:25 156:2	203:20 204:4	153:7 154:9	sentencings
39:14 148:1	174:5,17 187:11	204:5,7	send 33:15 48:7	84:3
153:11 163:12	189:3,14	207:25	50:4 86:14	sentiments
176:17	204:20	secret 153:1	91:19 105:22	123:19 124:18
rush 98:19	scale 122:12	202:24	170:23 171:25	separate 37:22
Ruth 1:11 2:3 4:9	167:18	section 36:12	185:1,5 190:1	105:13 108:11
6:13 7:7	Scathing 138:3	167:9 187:2	sending 143:10	108:20 111:1
143:24 198:17	scenario 158:21	188:3 201:23	sends 47:15	159:10 175:18
215:13 216:5	scene 67:25	see 17:1 21:20	195:17	175:19,19,24
216:12 217:1		24:16 30:5,10	sense 19:3	175:24,25

176:1 September 15:2 23:24 series 54:2 serious 40:9 83:8 86:12,16 121:7 148:16 164:17 165:7,8 175:15 serve 38:15 66:10 served 9:19,23 127:7 server 60:24 servers 60:23 services 3:3 5:22 6:21 110:17 201:15 204:10 205:19 205:24 206:4 208:23 215:1 215:18 sessions 166:7 set 17:22 21:9 29:12 31:9 45:6 46:16,23 46:24 47:23 48:2,9,14,24 49:19,25 50:2 50:12 52:19 54:11 57:8 61:19 66:17 72:21,22 76:2 80:17 98:5 127:17 130:11 134:8 135:2,15 136:15 138:20 143:4 148:7 sets 48:3 setting 37:1 46:16,17,23 47:4,15 48:15 57:14 65:21 settings 21:11 settle 50:2,6 settlement 48:25 49:1,25	50:7 175:25 176:2 setup 143:14,14 seven 30:11 126:20 seven-day 65:24 sex 48:2 83:2 86:17 shadowing 24:7 shadows 28:3 shake 164:10 share 99:2 shared 75:12 sharing 99:1,1 She'll 119:13 sheer 113:11 sheet 45:14,25 46:2 86:11 106:24 215:14 215:16,17 217:1 sheets 45:14 Sherrer 195:4,6 195:7 shift 166:23 shifting 144:18 Shipma 2:6 5:15 7:1,1 95:4 137:14 192:13 198:3,5,9,16 205:12 206:17 213:14 215:6,11 216:21 Shondel 1:3 4:3 4:17 6:13 215:10 217:2 Shook 151:11 195:10 shoot 148:2 shootings 40:12 shorter 29:1 shorthand 6:4 shortly 20:14 118:19 119:25 195:25 shot 54:17	show 16:11 51:15 77:8 135:4 139:10 142:9 150:19 showered 208:11 showing 16:16 208:16 side 130:18,21 sign 35:22,23 43:1 76:12,13 202:21 213:14 215:16 signature 6:6 202:6 215:14 215:16,17 216:21 217:24 significant 71:19 133:19 166:23 213:4,9 significantly 134:11 silent 52:24 90:15 similar 42:14 91:1 123:22,25 124:3,10 182:12 simply 213:5 Sincerely 215:20 single 35:1 84:14 118:12 124:22 168:20 176:6 182:20 182:20 single-count 183:5 sister 52:20 sit-down 94:18 sits 99:22 sitting 24:11 31:1 154:19 situation 134:19 141:4 situations 62:6 93:16 102:6,10	160:7,10 six 20:19 21:5 26:16,18 29:5 32:12 50:11 54:20 109:22 111:24 size 61:23 163:5 skill 167:23 skills 31:2 167:1 167:2 skipping 194:12 sliding 167:18 167:23 slightly 169:21 slowed 163:15 small 39:5 69:4 171:15 184:12 197:8 smaller 75:16 snag 186:2 sneak 66:4 snookering 206:9 so-and-so 70:20 soap 188:20 social 15:15 74:21 75:8 108:12,14 110:17 sole 107:11 solely 33:12 41:13 106:12 solutions 191:12 somebody 30:2 112:2 170:22 182:6 somebody's 156:4 someone's 30:4 48:17 61:13 174:4 somewhat 70:23 71:12 120:11 soon 134:9 sooner 34:14	72:7 soonest 27:4 sorry 48:22 87:25 89:13 109:3 117:14 147:13 182:15 195:5 198:24 205:6 sort 13:7 17:19 20:3 24:12,16 26:20 27:11 28:8 38:17 39:11 40:8 45:16 47:5 49:3,4 60:15 62:19 63:18 66:8 69:2 71:16 74:16 77:24 78:19 79:12 80:16 81:20 90:16 93:24 94:7,25 97:1 106:16 112:24 116:9,11 116:14 120:16 121:2 122:22 125:18 129:1 134:9,16 144:21 149:4 150:1,23 152:7 153:7 154:16 164:13 167:8 169:16 180:9 183:14 187:13 205:18 207:13 sought 138:11 southern 135:19 Spanish 76:9 77:4 speak 8:13 90:19 91:14 94:6,15 96:25 speaker 25:3 speaking 9:5 37:18 39:23 69:14 113:2 162:22 186:23
---	--	---	--	---

special 180:11	staff 13:12 15:11	state 1:6 4:6,15	146:2	submitted 46:2
specialize	15:14,15 18:9	4:18 5:8,10,15	Steven.Rams ...	subpoena
104:17 106:9	18:18 19:22	6:14 7:3 9:15	5:12	169:3
specialized	21:1 22:17	10:22 25:4	sticker 201:9	subpoenaing
74:2 109:9	40:18 41:24	47:2,15 57:16	Stinson 151:10	84:18
specific 31:2	42:18 50:18	65:18,19 66:6	STIPULATED	subscribe 216:9
104:7,9,25	50:23 51:22	71:5,17 85:19	6:1	substance
111:1 112:12	74:21 75:11	88:18 97:5	stone's 41:10	216:8
117:17,22	91:16 92:8,9	104:7 131:9	stood 156:5	substantive
118:19 151:21	104:21 107:12	146:3 163:8	stop 55:2 63:11	43:13
179:22,22	109:18 182:4	214:4 215:7,10	122:23 190:17	succeed 173:9
180:1,6,10	193:9	216:1 217:2	stopped 63:21	successful
181:20 192:17	staffed 15:12	statement 67:3	stopping 58:12	25:17,22 27:1
specifically	52:3,3	statements	store 68:23	38:11 210:24
78:2 94:17	staffings 77:23	67:4	straight 11:6	sufficient 67:5
124:21 130:16	stage 88:8	states 1:1 4:1,16	straightforward	sufficiently 70:4
162:22 181:17	129:15 195:9	6:15 89:8	7:20	suggest 182:13
specificity	stamps 149:4	164:5	strange 11:12	196:8
139:18	stand 210:6	statewide 22:10	strategically	suggestions
specifics 62:4	standalone	25:5,8 38:1	66:6	2:16,20 125:4
70:1 81:10	82:25	60:10,17,23	stream 20:9	137:4 178:11
speed 54:16,19	standard 27:2	94:16 104:22	street 4:12 5:5	189:25 190:14
spend 23:10	188:10 199:18	104:23 166:4	5:11,23 68:23	suing 151:18
36:19 43:12	199:20	166:25 170:22	215:2	Suite 4:12 5:16
85:15 90:17	standardly	173:6,7,9	stress 116:22	215:8
151:24 211:22	48:14	192:16	strictly 18:23	summer 23:16
spending 12:12	standards 49:18	status 95:17	19:2	23:17 76:19
185:21	175:7 189:4,17	statute 187:20	strike 20:16	Superior 89:8
spent 179:5	199:13,15	188:7,22,24	212:20	supervise 27:14
splatter 54:18	standing 174:13	189:16,22	strong 158:16	75:10 103:11
split 31:16,24	stands 101:12	stay 52:20	structure 16:8	supervised
94:25	198:25	114:15 185:19	17:22 41:11,14	38:3 39:17,18
spoke 76:19	staples 35:23	210:23	41:15,17	169:10 170:1
spoken 88:9	start 19:6 23:23	staying 120:5	struggle 76:5	191:19
107:25	26:4 48:22,23	steal 148:3	91:3	supervises
spot 20:24	66:1 167:1	stealing 148:13	struggled 117:7	33:15
22:6 55:11	211:9	148:22 149:2	117:8	supervising
79:11	start-up 23:6	149:3,3 165:11	stuck 152:7	29:22 69:22
spots 38:7	started 10:1	175:17 183:16	student 76:18	supervision
spotting 72:24	23:17,24	stealings 14:7	stuff 23:7 52:6	29:24 52:2
spreadsheet	55:15 60:20	step 47:18 58:9	77:25 83:7	133:12
73:21 74:3	89:24 92:10	171:19 188:20	90:25 120:10	supervisor
94:2 129:9	107:16 126:19	steps 88:4	150:24 167:4	33:17,19 75:10
185:2	139:2 149:19	93:20 101:18	180:8 196:14	114:17 116:1
springs 86:1	149:21 175:14	118:19 134:16	stunt 119:2	173:6
stab 64:19	190:6	150:7 179:9	submit 33:25	supervisors
stack 163:3	starts 26:6	Steven 5:10 7:3	185:12,17	113:10 114:19

supervisory 140:11	180:16 182:14 186:17 192:5	115:24 118:11 123:11 126:15	94:16 96:4 112:6,21 113:10	tell 14:16 19:13 48:6 73:2 74:1
supplemental 184:2 185:6	194:17 195:18 195:21,23	126:15 128:2 134:18 138:15	113:16 119:11 120:17,18,19	76:20 78:22 78:24 85:18
supplementary 185:12,13	198:11 199:4 204:5 211:2	140:23 141:2 152:21 155:4,5	132:12 134:13 135:14 151:9,10	93:2 99:12 104:1,16 114:16
supplies 36:12 36:13 184:21	surrounding 11:18,23 150:17	164:17,22 168:15 169:7,11	151:10,11 197:8 197:14 207:20	114:19 115:25 116:1 119:8
support 2:16 18:9,21,22	suspect 53:3 suspected 154:9	178:22 186:15 186:19 187:10	talking 24:18,18 37:6 51:11,11	121:8 126:13 133:23 134:4
19:22 22:17 43:2 125:4 137:4	suspects 99:10 suspension 117:4	190:2,10 203:11 210:19	70:8,11,19 71:17 73:3	157:2 173:10 199:25 201:13
supported 117:25,25	swear 7:6 Switching 152:13 178:14	takeaway 89:11 taken 1:12 6:3	86:8 117:2 121:25 122:16	203:4 telling 103:3
supposed 30:10 54:6,7	sworn 4:10 7:8 214:6	31:11 56:21 58:17 95:8	122:16 133:3 158:22 172:5	107:16 115:4,6 tells 190:21
54:10 75:12 78:10 83:15	system 12:3 22:9,10 37:25	123:3 130:22 131:2 159:19	177:11 191:7 192:13 194:9	204:21 template 125:3
90:18 98:16 120:11 158:13	38:1 67:14 125:21 130:10	160:16 198:13 214:7,12	201:16 talks 177:9	125:16,22 ten 70:17,17
159:9,10 175:21 177:5,7	149:13 154:7 155:2 156:17	215:13 217:4 takes 66:18	196:14 tampering 175:17	155:15 207:19 209:17
177:9 196:21 196:21,22	158:5 160:8 161:1 165:3,15	98:17 140:24 162:1	tangible 81:20 tape 52:17	ten-day 65:25 tend 34:14
suppress 100:5 suppressed 79:13	167:12 177:1 178:20 181:6,7	28:19 29:25 30:20 39:20	tapes 80:10 task 179:20	57:13 62:1 76:11 88:3,3
suppression 79:7,11,17,22	191:15 206:9 systemwide 170:9	53:16 65:17 68:21 69:5,12	tasks 178:25 180:2	108:7 166:11,12 192:11
80:12,17 81:1 Supreme 118:16		71:22 72:10 73:6,15 84:15	tax 153:17 team 16:8,10	tends 84:20 tenure 172:15
121:13 135:20 141:6	T	87:12 90:5 99:12,13	17:4,5,7,8,10 17:22,23 18:1	term 138:2 terms 36:19
sure 8:13,15 9:6 20:13 21:6	T 2:10 3:1,1 table 62:18	101:23 104:2 105:8 109:25	18:8,11,12 27:9 27:11,16,24	76:23 81:6 149:14 150:9
33:6 48:25 55:19 60:18	tables 43:15 take 16:3 20:18	113:8 116:18 118:19 124:21	28:13 30:1,20 30:21 70:19,21	152:14 159:24 186:2
63:16 65:6 91:1 95:6	27:2 28:25 32:2 34:6	132:14,15 133:3 134:15	73:6 105:1 162:10 168:18	terrify 94:7 territories 121:2
100:12 125:9 127:13 140:15	35:7 53:22 54:25 55:8,12	148:1 150:20 150:23,25	team's 162:16 teams 16:9 17:8	testified 63:20 71:23,24
146:7 158:2 159:15 161:5	66:7 67:7 80:5 88:4	164:9 166:9 169:2,4 178:9	17:18,19,20 18:25 162:10	163:19 171:6 177:23 183:21
164:2 169:17 169:18,19	101:19 103:11 109:23 114:17	180:7 188:11 talked 61:2	162:12,14 technically 75:11	192:6 211:5 212:21,25
173:13 177:2	114:20 115:5,14	73:1 85:13	teeth 208:11	testify 90:12,16 135:12
				testifying 7:25

150:7	138:18 141:1	88:12 89:25	181:13,13,19	tied 27:22
testimony 7:24	148:3 149:4,18	91:6,9,11 92:16	182:5 183:7,10	time 6:11 9:5,8
170:12 177:12	150:21 152:4	92:21,21 93:9	185:15 186:3	12:12 13:6
177:12 196:7	155:6 159:8	93:10,15 94:21	187:3 188:5,7	17:23 18:12
197:20 214:5	159:22,23	95:1,1,2 96:23	188:9,12,12,13	19:23 20:2,7
214:7	165:12 166:21	98:20 99:8	188:19 189:8	23:10 31:6,13
testing 77:20	169:16 172:7	101:6,7,9,22	189:10,11,12	34:8 35:5
192:7	172:12 177:13	101:24 103:5	190:19,20	41:25 43:12
tests 207:9	183:17,23	103:14 104:5	191:3 192:19	44:20 46:4,19
thank 61:1	184:17 195:9	105:6,11,18	195:11 196:12	48:6 49:6,18
145:17 160:6	196:9,16,16,23	107:22 108:15	203:17 206:13	51:24 53:4
199:5,21	207:9,12	109:11 110:11,11	206:13 207:3	57:21 58:10
200:6 215:19	210:13 211:17	110:16 111:8,11	207:6,7	61:22 62:24
themselves	212:11	112:3,16,21,25	210:22 211:10	63:12 64:9
174:12	think 7:19 8:11	113:1 115:7,8	thinking 37:7	65:13,16,16
theory 38:19	10:17 13:20	116:7,10,25	63:16	66:5,18 67:4
70:25	14:17 20:25	117:2,2,22	thinks 50:2	69:15 71:7
thereon 216:9	22:12,21,22	118:9 120:13	89:17	73:24 74:13
thereto 214:14	28:6,8,11,24	120:15 121:21	third 59:17	75:11 80:5,13
they'd 90:8	29:1 32:12	125:13,24	172:16	80:14 82:2
92:24 164:24	33:15 35:1	126:19 127:2,2	thought 21:9	83:24 84:3,10
thing 28:2	37:20,20,21	128:14 130:21	38:11 63:23	84:18,18 85:14
38:13 112:24	37:22 38:12	131:1,10,13,24	64:6 101:7	86:1 87:22
115:15 168:1,2	38:13,15 39:4	131:25 133:1,4	114:25 131:13	88:16 89:3,5
180:9 186:5	39:5,24 40:2	136:17 137:3	178:4,7 185:22	90:11,17 92:4
211:5	40:6,7,22 41:1	137:20,21	thoughts 172:7	92:11 93:6,17
things 8:11 9:6	41:15,15 42:2	138:2,21,21,24	thousand 64:25	94:22 95:3
10:17 16:11	42:13 43:10	138:25 139:13	threaten 115:13	96:12 104:4
18:13 21:12	48:11,13,13	140:9 142:16	three 15:12	105:15 107:19
23:23 24:16	49:3 50:6	142:18 145:11	23:23 33:24	107:20 113:1
24:19 29:13,13	51:17,20 52:4	145:14,16	42:15 47:24	115:5 119:8
29:25 36:9	52:5,7 55:15	146:17 147:25	49:19 53:20	121:17,20,22
40:12 43:5	60:18,24 63:11	148:5 149:15	64:5 78:14	122:6 127:14
47:20 48:24	65:11,15 66:20	150:2 151:15	122:14 132:13	135:17 136:17
49:12,13 50:12	67:5,24 68:24	153:12 154:12	132:13 151:22	143:11 146:6
52:1,7,11 62:16	69:16 70:6	157:1 158:7	157:18 172:14	148:24,25
68:2 74:16	71:11 72:3	160:1 163:8,10	190:6 196:9	149:12 151:24
75:1 78:1,12	73:13 74:10	163:14,14,20	three-day	152:1,4,10,23
80:6 86:18	75:11 76:10	164:10,15,23	166:10	155:11 156:14
90:8 91:21,23	77:7 78:23	165:11 166:3,6	three-year 26:3	157:1 159:8
91:24,25	79:5,9,12,20	166:6 167:25	threes 27:16	160:16 167:3
93:12 96:19	79:24 80:14	168:16 169:1	thrilled 164:23	168:15,24
105:4,9	80:20 81:12	170:19 172:3	throw 41:10	170:23 171:3
106:20 107:12	82:7,8 83:17	172:21 173:2,4	Thursday	172:18 173:11
114:7,12 116:12	84:8,11 85:7,8	174:7 176:16	127:15 135:2	173:16 177:1,3
116:16 117:23	85:11 86:2	177:23 179:5	136:16	178:2,11,25
119:3 122:10	87:17 88:5,6	179:22 181:11	tie 144:21	179:6,8,13,17

180:13,15,19 181:1,5,6,7,23 181:25 182:1 187:4 190:22 193:6 202:18 209:20 211:4 211:18 time-consumi ... 78:13 time-keeping 176:25 timekeeping 180:21,24 timely 30:25 34:19 54:7 114:6 211:24 times 23:17 31:10 39:19 57:22 68:22 73:7 88:7 94:3 155:15 182:1 207:5 209:15,18 timing 48:8 60:19,25 66:8 80:8 81:6 timliest 27:4 title 9:16 today 8:12,23 9:11 28:10 119:4 212:21 Today's 6:11 told 54:5 55:9 65:10 107:2 129:19 151:16 210:14 ton 120:9 171:7 tool 27:12 top 27:6,8 59:24 94:4 114:15 120:5,6 120:10 topic 25:3 169:21 topics 24:18 Torrence 118:25 134:21 141:11	189:24 190:21 total 133:15 146:12 touch 28:14 96:1 119:17 touched 54:9 touches 28:12 tough 39:19 114:15 track 165:1 166:12 179:13 180:1,11 181:1 181:13,23,25 182:9 tracked 179:21 179:24 180:2 181:8 182:1 tracking 177:1,2 178:25 179:6 179:8,16 181:4 181:7 tracks 94:16 156:15 166:5 166:14 train 166:16 trainer 20:3 28:2 trainers 24:4 training 20:4,6 23:11,13,15,20 24:2,3,5,13 25:5,8 28:4 28:12 73:14 92:5 94:13,16 104:22,23,25 105:5,10 131:25 166:1,5 166:10 181:23 trainings 24:6 104:20 130:14 133:2 165:16 165:21,25 166:25 transcribed 6:5 transcript 3:6 141:25 215:15 transfer 26:12	transfers 22:21 22:22,23 26:10,11 travel 184:15,19 tremendous 16:12 20:2 trend 147:17 149:9 150:2 trends 149:13 150:1 triage 62:19 65:15 trial 9:18 10:6 16:10 17:4,10 20:4 21:10,11 21:19 22:24 23:1 25:23 26:1 27:6,9,11 30:3,4,5,5 31:2,7,14,20 32:3,11,14,20 32:21,22 33:2 35:24 39:21 47:22 50:4,10 50:13 57:6,8 62:20,25 63:1 63:15,21 64:24 65:4 65:20 66:1,23 67:20 68:1,3 70:9,15,23 72:6,8,9 73:2 76:25 79:10 79:14,16 80:16 81:3 82:6,8,11 82:11,20 83:3 83:20,25 90:12,20,25 91:8 92:18 102:2,17,19,20 102:21,22 105:14 109:21 109:22 113:10 134:3,8 152:10 167:1,2,3,24 168:19 174:4,5 176:4 195:12	209:1 210:22 215:18 trials 30:22 62:21 65:2,3 82:13,14 105:4 195:10 trick 159:13 188:7 tricky 153:11 tried 31:20 51:23 55:13 64:24 68:2 82:17,22 115:1 134:25 135:10 150:5 173:6 tries 78:6 triggered 56:19 true 26:7 39:13 57:18 74:9 80:21 81:6 113:13 149:5 153:13 204:11 213:8 216:8,10 trust 62:13 63:8 63:9 truth 28:10 107:1 210:14 truthfully 7:23 try 30:2,3 34:19 57:7 78:7 82:19 90:5,10 98:12 101:24 110:11 111:11 130:12 134:19 139:1 151:24 158:12 160:17 162:17 206:15 211:1 trying 22:21 31:16 67:21 90:18,24 100:12 111:5 138:2 143:4 144:21 159:13 159:16 turn 201:12 turned 77:12	78:3 Turner 123:14,15 turning 168:7 183:19 192:21 193:12,24 194:11 turnover 19:3,19 21:25 27:20 28:23 32:2 38:8 162:22 163:10 167:8 tweaked 211:7 twice 41:19 113:1 207:7 two 11:13 12:20 12:24 13:7 20:19,20,24 22:12,22 23:6 25:22 26:24 26:25 29:6 33:12 41:3,20 42:15 44:21 53:15,16 73:1 82:8 85:25 99:20 104:5 105:11,18 106:12 121:6 122:13 130:13 138:12 150:7 156:15 169:13 179:8 187:23 188:8 195:10 198:1 207:7 210:5 twos 24:24,25 26:14 type 21:21 27:3 40:9 103:11 148:8 149:11 149:20,21 154:7 158:21 165:8 167:20 180:13,13 186:2,14 196:4 types 14:12 23:22 86:8,10 86:15 147:23
--	---	--	--	---

148:6 149:9,14 151:3 182:12 typewriting 6:6 214:9 typical 182:18 typing 42:21	83:9 unclear 195:21 uncomfortable 174:21,22 unconstitutio ... 188:12 uncover 69:1 under-reporti ... 181:3 undercut 187:8 187:13 undergo 96:6 undergrad 11:4 11:6 underlined 142:7 underlying 159:12 underreported 180:23 understand 7:25 8:7 44:14 64:14 72:4 76:23 90:6,14 114:12 142:5 146:9 159:16 165:15 166:20 196:7 202:3 understanda ... 118:3 understanding 11:24 36:22 86:21 101:2 102:3 109:5 111:13 113:24 114:3,8 119:11 120:12 121:23 122:21 130:10 139:8 153:19 156:15 167:17 168:2 173:15 187:6 188:23 189:20 197:20 199:14 205:13 206:12 Understood 17:3	undertake 31:18 145:2 unemployed 204:8 205:17 unemployment 148:23 149:3 unfile 104:4 unfortunate 143:6 Union 4:11 6:18 United 1:1 4:1,16 6:15 89:7 unlawful 138:25 unofficial 171:3 unrepresented 46:19 50:21 50:25 52:8 unsure 185:6 update 91:25 207:4 updated 177:9 207:5,6 upper 28:25 34:1 35:21 37:6,11,14,18 52:8 67:8 78:12 172:6 172:24 178:19 184:2 188:25 upset 55:14 117:3 197:9 uptick 149:10 use 13:8 17:19 17:24 35:11 36:7 42:17 73:24 74:5 75:17 78:1 80:19 98:15 112:7 132:11 168:7 171:11 177:1 178:13 useful 43:6 usually 16:19 24:20,20 32:3 44:21,22 46:4,6,22,24 47:12,23	50:10 51:9 57:12 58:5 61:11 72:5 80:2 83:6 91:8 98:17 104:25 110:9 133:24 153:10 153:10 165:6 170:6,15 184:8 211:19 212:11 utilize 183:22 189:1 utilized 176:25 188:2 utilizing 18:10 178:3,7	181:10 186:15 vertical 172:15 173:12 175:9 175:15 176:14 176:22,23 190:20 victim 107:1 video 1:11 4:9 6:12 16:11,12 16:15 80:5 84:13 93:11 videographer 5:19 6:10,20 7:5 58:16,18 95:7,9 123:2,4 145:20,22 198:12,14 213:13 videos 16:16 videotaped 99:15 Vietnamese 76:13 views 165:3,14 violation 29:7 44:6 103:4 134:23 139:4 140:10,11 144:16,18 168:1 violations 31:6 31:9,12,25 32:5 114:2 violent 149:16 virtually 62:22 visit 67:17,25 visitation 61:24 61:25 voir 24:18 102:4 102:11,14 voluntarily 169:4 votes 17:24 vs 1:5 4:5,18
U Uh-huh 25:13 29:20 44:8 55:22 58:25 59:8,19,22 61:4 82:12 95:12 97:18 100:17 112:8 119:18 136:22 137:8 141:12 147:10 150:10 153:24 154:23 155:25 156:18 156:24 157:7 157:16,24 158:24 161:15 161:23 162:3 163:2,23 165:23 168:9 170:13 171:23 173:18 175:11 179:12,18 182:23 183:24 185:8 186:25 187:17,25 192:9,25 193:14 194:13 196:2,5 197:4 197:18 204:17 205:16 208:2 ultimate 34:7 35:20 89:11 ultimately 33:24 116:2 210:15 unable 62:15 157:5 168:25 unaware 36:15 uncharted 121:2 unclassified			V v 2:13 192:24 215:10 217:2 vacation 24:24 valid 128:15 valuable 31:17 178:1 varied 34:8 varies 28:6,14 39:10 40:8 43:22 53:15 variety 29:25 77:3 120:17 131:20 165:13 166:5,9 various 13:10 159:18 165:16 167:18,19 183:22 vary 17:23 85:18 verbally 8:15 vernacular 185:7 version 80:4 116:22 versus 6:14 36:8,8 43:13 51:24 89:8 146:24 147:13 147:13 172:25	W Wade 100:2,4 wait 206:21

waiting 126:5 127:10 128:13 128:23 143:17 144:8 179:25 waits 66:6 waive 49:20 53:2 83:15 waived 26:8 83:11,13,21 89:19 waiving 90:16 wake 134:17 walk 20:5 152:17 172:2 209:12 walk-ins 152:21 want 10:10 13:4 25:1,10 28:1 34:18 37:8,21 38:12,21 41:18 46:1 47:21 49:3 55:16 65:18,24 71:22 90:11,13 91:1,9,12 92:4 98:7,10,25 99:2,11 100:24 101:17 104:2 107:16,17,17 108:4 117:11 121:4,5 127:15 128:16 130:11 131:14 132:14 132:15 137:13 138:23 146:8 164:12 169:17 169:18,19 171:16,20,21 172:8,25 174:5,17 175:4 183:9 184:5 188:5 198:2,9 199:10,24 201:8,21 209:4 wanted 9:7 23:19 44:17	50:4 52:10 60:22 118:1 134:15,23 138:6 139:8,8 142:2,2,4,4,11 169:6,10 172:20 192:18 196:18 199:3 wanting 47:17 63:2 117:12 134:3 171:11 wants 38:14,15 101:25 157:23 174:19 wasn't 9:6,6 19:23 22:24 22:25 23:7 31:22,23 75:10 102:11 104:8 117:11 118:7,7 122:5 122:9 136:24 138:19 169:13 175:23 190:5 196:15,19,19 196:24 197:13 197:14 waste 17:1 watch 80:5 115:15 186:10 watched 79:25 Waters 121:14 122:8 wave 161:21 way 22:16,17 29:11 31:19 33:23 43:9 61:19 67:2 69:16 78:8 80:2 98:23 99:23 101:22 105:21 106:1 107:6 126:13 128:23 129:7 133:20 159:20 163:22 165:9 169:1 176:11	182:9,16 194:5 195:12 196:22 197:13 208:15 ways 146:8 150:2 165:12 189:22 we'll 10:19 16:6 20:12 38:24 38:25 46:5 48:23 53:16 65:19 118:19 130:6 156:20 184:23 190:8 we're 10:8 11:20 15:14 20:3 22:9 26:2 37:25 43:23 47:19,25 54:6 54:7,10,21 55:16,16 56:21 67:20 70:8 73:3 78:9 82:7,7,8 96:13 98:4 101:9 102:20,22 103:4,17 119:14 121:25 126:16 127:4 128:5 133:2 139:1 142:25 147:7 152:6 155:23 155:23 158:22 160:13,14,19 163:7 164:11 167:8 172:12 174:11,12,23 175:6 177:2,11 184:24 190:7 206:14 we've 12:5 13:22 41:9 48:25 49:1 51:23 53:23 54:4 56:21 72:12 76:13 77:7 94:3 100:20,21	112:11,11,16 120:6,6 127:2 133:1 145:15 146:6 149:19 174:6,14,16,18 174:19,19,22 176:22 185:4 211:2 weapon 150:4 wear 208:17 website 125:14 153:1 Wednesday 144:15 week 63:18 137:20 162:10 162:12,14,15,16 162:16,19 190:3 weekend 45:2 weekly 92:9 119:12 weeks 20:19,20 21:5 46:23 47:24 109:22 197:23 weigh 39:6 51:24 weight 26:14 weird 116:21 149:17 went 11:6 69:11 91:12 92:19 107:21 122:8 135:5,7 141:5 173:4 176:22 179:21 180:11 189:7 190:15 195:12 197:11 weren't 21:11 51:25 52:1 77:6 90:1 92:21 115:23 117:10 118:4 122:3,6,21 154:13 163:16 181:4	West 4:12 5:11 5:16 215:8 western 1:1 4:1 4:16 6:16 136:1 white 148:18,21 148:23 149:5 149:6 who've 115:7 wide 120:16 wiggle 103:16 118:7 Williamson 2:4 2:8 5:4 6:24 6:24 7:11,16 58:14,19 95:6 95:10 122:25 123:7 137:13 137:15 145:15 151:20 195:4,6 198:1,4,8,11 206:20,22 208:19,21 213:12 215:23 win 102:19,19 withdraw 101:17 101:25 103:3 142:1 154:12 161:10,16,20 174:20 210:4 210:5 withheld 86:2 117:10 witness 2:2 6:6 7:6 16:13,15 63:10 65:2,5 66:23 68:25 99:22 169:23 177:19 195:5,7 205:6 214:5,7 215:15 217:1,1 217:24 witnessed 53:4 witnesses 47:2 57:17 64:18,23 65:9,14 66:13 68:11,13,19 69:1 71:23
---	---	--	---	--

84:15 85:12 88:17 110:16 112:7 168:21 woman 105:7 156:10 word 113:24 132:11 141:16 171:21 words 29:22 32:20 106:19 180:20 work 12:21 14:5 18:23,23 19:17 20:4,10 24:2 24:8 31:11,23 33:23 34:24 41:13 42:23 43:12,13 54:7 54:19 69:11,23 75:8 84:5,20 87:6,12 108:7 112:10 119:4 120:9,11 124:20 126:10 135:18 144:13 151:23 161:7,11 164:24 174:15 174:19 179:23 181:4,10 worked 23:6 116:13 191:19 worker 108:12 108:14 110:18 workers 15:15 74:21 working 24:12 26:2 41:24 43:3 62:20 85:15 133:9 144:14 153:9 180:25 workload 20:24 150:16 165:25 196:10 workloads 150:14 works 36:23	world 40:1 41:2 87:19 worried 181:1 197:9 worry 181:2 worthwhile 188:16 wouldn't 43:18 67:18 70:13 71:19 94:9 95:19,21 149:5 158:15 177:21 196:12 204:21 208:14,15 wreak 134:9 writ 2:16,19 125:4 135:15 135:19,23 136:5,14,16 210:17,25 write 19:1 25:19 25:19 29:1,14 33:11,14,25 43:15 46:1 75:13 86:12 98:8 108:16 140:12 190:16 writing 30:18 125:12 189:21 writt 210:21 210:24 211:4 written 9:3 25:25 71:2 80:2 wrong 56:19 136:24 187:7,7 wrote 55:9 134:20 X X 2:1,10 3:1 Y yeah 17:1 38:18 52:22 53:5 60:8 65:15 68:7 71:15	79:24 82:25 83:6 85:6 86:20 93:19 100:4 105:22 116:10,10,10 120:13 121:21 139:16 142:2 144:14 152:2 157:22 158:2 164:20 167:25 178:22 180:17 182:14 192:16 193:8 195:7 197:6 200:9 203:17 208:7 year 11:17 16:4 19:5 22:21 25:16 26:17 28:24 43:21 43:22,22 44:4 44:10 50:13 64:24 73:1,19 82:6,9,23,23 94:4 104:23 104:24 105:15 106:3 132:1 163:13 184:1 184:24 186:4 186:7,11 192:1 yearly 120:1 years 13:3 14:21 23:6 25:22 26:25,25 27:5 37:4 39:21 45:12,17 75:7 105:16 109:1 111:24 116:13 120:8 149:8,22 176:23 179:1,5 179:6 182:2 207:7,19 yellow 68:22 Yep 153:21 Yesterday 9:1 York 5:6,6	Z O 06 59:25 063 122:22 09 108:24 1 12:12 11:20 12:4 12:13 21:22 25:12,15,16 26:4,6 29:1 54:2 58:21,22 137:3 184:23 1,000 41:24 1.800.280.33 ... 5:24 1:49 198:12 1:52 198:14 10 2:23 108:24 199:22,25 10,000 165:11 10/2/2017 2:14 10:17 58:16 10:27 58:18 100 5:16 35:3,8 44:11 54:9 65:6 106:4,6,7 116:20 120:15 154:24 164:23 215:8 1000 5:16 215:8 10004 5:6 11 3:3 9:22 109:1 201:6,9 11:21 95:7 11:25 95:9 110 55:16 12 3:4 203:1,4 207:1 12:08 123:2,4 12:42 145:20,22 123 2:14 124 2:15,17 125 5:5 129 2:18 13 59:16 134:21	141:10 1353 5:21 6:4 214:18 215:22 136 2:20 137 2:21 139 2:22 14 37:4 145 2:5 15 28:24 40:3 132:5 133:15 151:23 15th 134:22 16 10:7,8,11,11,13 10:18 11:9,11,12 82:7 127:18,19 130:25 146:19 176:14 1608 5:23 215:2 16th 10:13,16 12:10 17 141:21 162:25 17-04057-CV- ... 1:5 4:5 6:15 18 15:2 183:1 200:2 18th 5:5 135:6 19 215:4 198 2:6 199 2:24 1997 11:1 1998 10:1 1s 25:1 148:16,16 2 2 2:13 25:18,21 88:20,21 192:23 204:5 204:6,14,16 2:00 38:25 2:08 213:13,15 20 28:25 39:21 40:3,14 58:6 116:13 132:5 133:15 140:17 153:18 163:15 175:20 176:22 20-plus 149:8
--	--	---	---	--

20,000 154:15	4	194:11		
2002 59:16	4 2:15 26:22	6,000 16:3,4		
2009 163:16	27:10 53:23	6/14 59:25		
201 3:3	53:25 54:1,22	60 41:20		
2011 32:13	55:1 56:5,14	600 120:22,25		
179:11	56:18 114:2	121:12 138:4		
2012 121:21	121:3 124:4,7	155:4 186:23		
122:3 176:22	124:22 134:25	189:3 197:16		
187:16 196:19	135:12,21	600.036		
2013 187:18	138:4,22	135:23		
193:5	140:11 150:17	600.063 121:1,6		
2016 82:14	151:17 172:17	137:4,21 187:11		
162:24	188:6,9 189:9	64108 5:23		
2017 1:13 4:10	189:18 191:2	215:3		
6:11 163:1	193:24 196:14	64111 4:13		
215:4,13	40 28:25 40:7	65102 5:11		
216:15 217:4	142:25 164:14	65203 5:17		
203 3:5	164:16,17	215:9		
206 2:7	406 4:12			
207 5:11	4100 41:22	7		
208 2:8	164:11	7 2:4,19 5:16		
20th 142:8	420 4:12	136:2,5 215:8		
212.607.3300	45 9:2	75 12:16 43:14		
5:6	48 82:9			
21st 142:10	49 82:9	8		
24 163:9		8 2:21 137:5,7		
25 40:13	5	137:22		
250 127:15,20	5 1:13 2:16 4:10	80 44:11 157:8		
29 13:3 14:21	6:11 124:24	816.221.1160		
2s 25:1,12,21	125:2 194:12	5:24		
	215:13 217:4	88 2:13		
3	5,000 16:3			
3 2:14 26:2,21	43:24 106:5	9		
123:5,8 193:12	207:10,17	9 2:22 139:22		
193:13 205:1	50 12:16 41:10	139:24		
30 35:9 40:7	41:20 192:1	9:00-ish 146:9		
98:16 163:15	500 36:1 44:4	9:05 6:9,12		
175:20 190:9	573.526.5212	90 44:11 98:18		
300 120:13	5:17	157:9		
32 13:24	573.751.3321	99 47:3		
33 27:14	5:12			
34th 4:12	58 2:12			
35 13:13,14 18:16	59 64:24,25			
19:6 39:23	82:5,14			
40:23,24				
183:1	6			
39 124:16,21	6 2:18 129:21,24			